



# भारत का राजपत्र The Gazette of India

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में  
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a  
separate compilation

## भाग II—खण्ड 3—उप-खण्ड (ii) PART II—Section 3—Sub-Section (ii)

(रक्षा मंत्रालय को छोड़कर) भारत सरकार के मंत्रालयों द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं  
Statutory Orders and Notifications issued by the Ministries of the Government  
of India (other than the Ministry of Defence)

कार्मिक, लोक शिक्षा तथा न्याय मंत्रालय  
(कार्मिक और प्रशिक्षण विभाग)

प्रादेश

नई दिल्ली, 18 फरवरी, 1994

का.प्रा. 625.—केन्द्रीय सरकार एतद्वारा दिल्ली  
विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25)  
की धारा 6 के साथ पाठन धारा 5 की उप-धारा (1) के  
अन्तर्गत प्रदत्त शक्तियों का प्रयोग करते हुए पुलिस स्टेशन  
कोतवाली, बाड़मेर, राजस्थान में भारतीय दंड संहिता की  
धारा 307/326/330/120-बी/342 के अन्तर्गत रजिस्टर्ड  
मामला सं. 45/94 तथा भारतीय दंड संहिता की धारा  
309 के अन्तर्गत रजिस्टर्ड मामला सं. 44/94 से संबंधित  
अपराधों और उपर्युक्त दोनों मामलों से उत्पन्न होने वाले  
किसी भी संभवधार के अनुयाय में किए गए किसी अन्य अपराध  
अथवा अपराधों के अन्वेषण के लिए राजस्थान राज्य सरकार  
के प्रादेश सं. पी.एम. एन. 94/570 दि. 14-02-1994  
के तहत राजस्थान राज्य सरकार की मदमति से दिल्ली विशेष

पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता  
का विस्तारण संपूर्ण राजस्थान पर करती है।

[सं. 228/4/94-ए.बी.डी.-II]

पराग प्रकाश, उप सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES  
AND PENSIONS

(Department of Personnel and Training)

ORDER

New Delhi, the 18th February, 1994

S.O. 625.—In exercise of the powers conferred by Sub-  
Section (1) of Section 5 read with Section 6 of the Delhi  
Special Police Establishment Act, 1946 (25 of 1946), the  
Central Government, with the consent of the State Gov-  
ernment of Rajasthan vide Order No. PSH/94/570 dated  
14-02-1994 hereby extends the powers and jurisdiction of  
the members of the Delhi Special Police Establishment to  
the whole of the State of Rajasthan for investigation of the  
offences in Case No. 45/94 under Sections 307/326/330/120-B/  
342 of Indian Penal Code and Case No. 44/94 under Section  
309 IPC, both registered at Police Station Kotwali, Barmer  
Rajasthan and for any other offence or offences committed  
in the course of the same transaction arising out of both  
the above said cases.

[No. 228/4/94-AVD-II]

PARAG PRAKASH, Dy. Secy.

(651)

वित्त मंत्रालय  
(राजस्व विभाग)

आदेश

नई दिल्ली, 9 फरवरी, 1994

का.आ. 626.—भारत सरकार के संयुक्त सचिव ने जिसे विदेशी मुद्रा संरक्षण और तस्करी निवारण अधिनियम, 1974 (1974 का 52) की धारा 3 की उपधारा (1) के अधीन विशेष रूप से सशक्त किया गया है, उक्त उपधारा के अधीन आदेश फा.सं. 673/69/92-सी.शु.-8 दिनांक 25-3-1992 को यह निदेश जारी किया था कि श्री हीरा सिंह, गुलाब सिंह चौहान, दुकान नं. 10 कैलाश को-ऑपरेटिव हाउसिंग सोसाइटी जुहू चर्च रोड, सान्ताक्रुज (वेस्ट) बम्बई-400055 को निरुद्ध कर लिया जाए और केन्द्रीय कारागार बम्बई में अभिरक्षा में रखा जाए ताकि उसे ऐसा कोई भी कार्य करने से रोका जा सके जो विदेशी मुद्रा के संवर्धन के लिए हानिकारक हो।

2. केन्द्रीय सरकार के पास यह विश्वास करने का कारण है कि पूर्वोक्त व्यक्ति फरार हो गया है या अपने को छिपा रहा है जिससे उक्त आदेश का निष्पादन नहीं हो सके;

3. अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 7 की उपधारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि पूर्वोक्त व्यक्ति इस आदेश के शासकीय राजपत्र में प्रकाशन के 7 दिन के भीतर पुलिस आयुक्त, बम्बई के समक्ष हाजिर हों।

[फा.सं. 673/69/92-सी.शु.-8]

रूप चन्द, प्रवर सचिव

MINISTRY OF FINANCE

(Department of Revenue)

ORDER

New Delhi, the 9th February, 1994

S.O. 626.—Whereas, the Joint Secretary to the Government of India specially empowered under Sub-section (1) of Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) issued order F. No. 673/69/92-Cus. VIII dated 25-3-92 under the said Sub-section directing that Shri Hira Singh Gulab Singh Chauhan, Shop No. 10, Kailash Co-operative Housing Society, Juhu Church Road, Santacruz (West) Bombay-400055 be detained and kept in custody in the Central Prison, Bombay with a view to preventing him from indulging in activities prejudicial to the augmentation of Foreign Exchange resources in future.

2. Whereas, the Central Government has reasons to believe that the aforesaid person has absconded or is concealing himself so that the order cannot be executed;

3. Now, therefore, in exercise of the powers conferred by clause (b) of Sub-section (1) of Section 7 of the said Act, the Central Government hereby directs the aforesaid person to appear before the Commissioner of Police, Bombay, within 7 days of the publication of this order in the Official Gazette.

[F. No. 673/69/92-CUS. VIII]

ROOP CHAND, Under Secy.

आदेश

नई दिल्ली, 9 फरवरी, 1994

का.आ. 627.—भारत सरकार के संयुक्त सचिव ने, जिसे विदेशी मुद्रा संरक्षण और तस्करी निवारण अधिनियम, 1974 (1974 का 52) की धारा 3 की उपधारा (1) के अधीन विशेष रूप से सशक्त किया गया है, उक्त उपधारा के अधीन आदेश फा.सं. 673/26/93-सी.शु.-8 दिनांक 24-3-1993 को यह निदेश जारी किया था, कि श्री उदय रघुनाथ बाघ सपुत्र श्री रघुनाथ बाघ 21, अप्पूरव चेम्बूर नाका बम्बई को निरुद्ध कर लिया जाए और केन्द्रीय कारागार बम्बई में अभिरक्षा में रखा जाए ताकि उसे ऐसा कोई भी कार्य करने से रोका जा सके जो विदेशी मुद्रा के संरक्षण के लिए हानिकारक हो।

2. केन्द्रीय सरकार के पास यह विश्वास करने का कारण है कि पूर्वोक्त व्यक्ति फरार हो गया है या अपने को छिपा रहा है जिससे उक्त आदेश का निष्पादन नहीं हो सके;

3. अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 7 की उपधारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि पूर्वोक्त व्यक्ति इस आदेश के शासकीय राजपत्र में प्रकाशन के 7 दिन के भीतर पुलिस आयुक्त, बम्बई के समक्ष हाजिर हों।

[फा.सं. 673/26/93-सी.शु.-8]

रूप चन्द, प्रवर सचिव

ORDER

New Delhi, the 9th February, 1994

S.O. 627.—Whereas, the Joint Secretary to the Government of India specially empowered under Sub-section (1) of Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) issued order F. No. 673/26/93-Cus. VIII dated 24-3-93 under the said Sub-section directing that Shri Uday Raghunath Wagh, S/o Sh. Raghunath Wagh, 21, Appurva, Chembur Naka, Bombay, be detained and kept in custody in the Central Prison, Bombay with a view to preventing him from indulging in activities prejudicial to the conservation of Foreign Exchange resources in future.

2. Whereas, the Central Government has reasons to believe that the aforesaid person has absconded or is concealing himself so that the order cannot be executed;

3. Now, therefore, in exercise of the powers conferred by clause (b) of Sub-section (1) of Section 7 of the said Act, the Central Government hereby directs the aforesaid person to appear before the Commissioner of Police, Bombay, within 7 days of the publication of this order in the Official Gazette.

[F. No. 673/26/93-CUS. VIII]

ROOP CHAND, Under Secy.

## आदेश

नई दिल्ली, 9 फरवरी, 1994

का.आ. 628:—भारत सरकार के संयुक्त सचिव ने, जिसे विदेशी मुद्रा संरक्षण और तस्करी निवारण अधिनियम, 1974 (1974 का 52) की धारा 3 की उपधारा (1) के अधीन विशेष रूप से सशक्त किया गया है, उक्त उपधारा के अधीन आदेश फा. सं. 673/47/93-सी.शु.-8 दिनांक 17-5-1993 को यह निदेश जारी किया था कि श्री रसीद हुसैन शिराजि उर्फ बाबूभाई उर्फ लतीफ उर्फ रशीद उर्फ बशीर उर्फ रियाज, ई-7, मुकुन्द नगर, कोआपरेटिव हाऊसिंग सोसाइटी लि. अन्धेरी कुरला रोड, अन्धेरी (ईस्ट) बम्बई-400059 को निरुद्ध कर लिया जाए और केन्द्रीय कारागार बम्बई में अभिरक्षा में रखा जाए ताकि उसे ऐसा कोई भी कार्य करने से रोका जा सके जो विदेशी मुद्रा के संवर्धन के लिए हानिकारक हो।

2. केन्द्रीय सरकार के पास यह विश्वास करने का कारण है कि पूर्वोक्त व्यक्ति फरार हो गया है या अपने को छिपा रहा है जिससे उक्त आदेश का निष्पादन नहीं हो सके;

3. अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 7 की उपधारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि पूर्वोक्त व्यक्ति इस आदेश के शासकीय राजपत्र में प्रकाशन के 7 दिन के भीतर पुलिस आयुक्त, बम्बई के समक्ष हाजिर हो।

[फा.सं. 673/47/93-सी.शु.-8]

रूप चन्द, अवर सचिव

## ORDER

New Delhi, the 9th February, 1994

S.O. 628.—Whereas, the Joint Secretary to the Government of India specially empowered under Sub-section (1) of Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) issued order F. No. 673/47/93-Cus. VIII dated 17-5-1993 under the said Sub-section directing that Shri Rasheed Hussain Shirazi @ Babubhai @ Lateef @ Rashid @ Basheer @ Riyaz, E-7, Mukund Nagar Co-Operative Housing Society Ltd., Andheri Kurla Road, Andheri (East), Bombay-400059, be detained and kept in custody in the Central Prison, Bombay, with a view to preventing him from indulging in activities prejudicial to the augmentation of Foreign Exchange resources in future.

2. Whereas, the Central Government has reasons to believe that the aforesaid person has absconded or is concealing himself so that the order cannot be executed;

3. Now, therefore, in exercise of the powers conferred by clause (b) of Sub-section (1) of Section 7 of the said Act, the Central Government hereby directs the aforesaid person to appear before the Commissioner of Police, Bombay, within 7 days of the publication of this order in the Official Gazette.

[F. No. 673/47/93-CUS. VIII]

ROOP CHAND, Under Secy.

## (व्यय विभाग)

नई दिल्ली, 16 फरवरी, 1994

का.आ. 629:—केन्द्रीय सरकार, सरकारी स्थान (अप्राधिकृत अधिभोगियों की बेदखली) अधिनियम, 1971 (1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, नीचे की सारणी के स्तम्भ (1) में उल्लिखित अधिकारी को, जो सरकार का एक राजपत्रित अधिकारी है, उक्त अधिनियम के प्रयोजन के लिए सम्पदा अधिकारी नियुक्त करती है, जो उक्त सारणी के स्तम्भ (2) में की तत्स्थानी प्रविष्टि में विनिर्दिष्ट सरकारी स्थानों के सम्बन्ध में अपनी अधिकारिता की सीमाओं के भीतर उक्त अधिनियम द्वारा या उसके अधीन सम्पदा अधिकारियों को प्रदत्त शक्तियों का प्रयोग और उस पर अधिरोपित कर्तव्यों का पालन करेगा।

## सारणी

अधिकारी का पदनाम	सरकारी स्थानों के प्रयोग और अधिकारिता की स्थानीय सीमाएं
1	2
संयुक्त निदेशक (प्रशासन)/ उप-निदेशक (प्रशासन), राष्ट्रीय लेखा परीक्षा और लेखा अकादमी, शिमला	निदेशक, राष्ट्रीय लेखा परीक्षा और लेखा अकादमी, शिमला के प्रशासनिक नियंत्रणाधीन, शिमला में येरोस और येरो विले के परिसर।

[फा. सं. ए-11013/2/93-ई.जी.]

अनुराधा प्रसाद, अवर सचिव

(Department of Expenditure)

New Delhi, the 16th February, 1994

S.O. 629.—In exercise of the powers conferred by section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971), the Central Government hereby appoints the Officer mentioned in column (1) of the Table below, being a gazetted Officer of the Government, to be the Estate Officer for the purpose of the said Act, who shall exercise the powers conferred and perform the duties imposed on Estate Officer by or under the said Act, within the local limits of his respective jurisdiction in respect of Public Premises specified in the corresponding entry in column (2) of the said Table.

## TABLE

Designation of the officer	Categories of the Public Premises and local limits of jurisdiction
(1)	(2)
Joint Director (Administration)/Deputy Director (Administration) National Academy of Audit and Accounts, Shimla.	Premises at Yarrow and Yarrow Ville at Shimla under the Administrative control of Director, National Academy of Audit and Accounts, Shimla.

[F. No. A-11013/2/93-EG]

ANURADHA PRASAD, Under Secy

नई दिल्ली, 17 फरवरी, 1994

कां०आ० 630 :—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में भारतीय लेखा परीक्षा और लेखा विभाग के कार्यालयों की बाबत कां०आ० 1778, तारीख 29 जुलाई, 1993 का निम्नलिखित रूप में संशोधन करती है :—

क्रम सं० 10, 11, 25, 26, 33, 40 और 44 के सामने “डाक और तार” शब्दों के स्थान पर “डाक और दूर-संचार” शब्द रखे जाएंगे ;

उपरोक्त अधिसूचना के उपबंध क के स्तम्भ 4 में “डाक और तार” शब्दों के स्थान पर, जहां-जहां वे आते हैं, “डाक और दूरसंचार” शब्द रखे जाएंगे।

[का०सं०सी०-11021(1)-93-ई.जी.]

अनुराधा प्रसाद, अवर सचिव

New Delhi, the 17th February, 1994

S.O. 630.—In pursuance of sub-rule (4) of rule 10 of the Official Language (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby amends S.O. 1778 dated 29th July, 1993 in respect of the Offices of the Indian Audit and Accounts Department as follows :—

Against Serial Numbers 10, 11, 25, 26, 33, 40 and 44 for the words “Post and Telegraph” the words “Posts and Telecommunication” shall be substituted;

In the Annexure A of the aforesaid notification in column 4 for the letters “P&T” wherever they occur, the words “Posts and Telecommunication” shall be substituted.

[F. No. C-11021/1/93-EG]

ANURADHA PRASAD, Under Secy.

मानव संसाधन विकास मंत्रालय

(संस्कृति विभाग)

नई दिल्ली, 26 मार्च, 1993

कां०आ० 631 :—केन्द्रीय सरकार राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में मानव संसाधन विकास मंत्रालय, संस्कृति विभाग के अधीन निम्नलिखित कार्यालयों को, जिनके 80% से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :—

1. महानिदेशक का कार्यालय, भारतीय पुरातत्व सर्वेक्षण, जनपथ, नई दिल्ली
2. अधीक्षक पुरातत्वविद का कार्यालय, भारतीय पुरातत्व सर्वेक्षण, भोपाल मण्डल, भोपाल
3. अधीक्षक पुरातत्वविद, भारतीय पुरातत्व सर्वेक्षण, कलकत्ता मण्डल, कलकत्ता

4. पुरातत्व संग्रहालय, भारतीय पुरातत्व सर्वेक्षण, चन्द्रगिरि संग्रहालय, चन्द्रगिरि (आ० प्र०)
5. भारतीय पुरातत्व सर्वेक्षण, संरक्षण सहायक का कार्यालय, मांडू (म० प्र०)
6. भारतीय पुरातत्व सर्वेक्षण, दमन
7. अधीक्षक पुरातत्वविद, का कार्यालय, भारतीय पुरातत्व सर्वेक्षण, बंगलौर मंडल, बंगलौर
8. भारतीय पुरातत्व सर्वेक्षण, बड़ोदरा मण्डल, बड़ोदरा
9. भारतीय पुरातत्व सर्वेक्षण, भुवनेश्वर मण्डल, भुवनेश्वर।

[सं० 1-1/93-हिन्दी]

जी० वेंकटरमणी, उप-सचिव

MINISTRY OF HUMAN RESOURCE DEVELOPMENT  
(Deptt. of Culture)

New Delhi, the 26th March, 1993

S.O. 631.—In pursuance of sub-rule (4) of Rule 10 of the Official Languages (use for official purposes of the Union) Rules, 1976, the Central Government hereby notifies the following offices under the Ministry of Human Resource Development, Department of Culture, more than 80 per cent staff of which has acquired working knowledge of Hindi :—

1. Office of Director General, Archaeological Survey of India, Janpath, New Delhi.
2. Office of the Superintending Archaeologist, Archaeological Survey of India, Bhopal Circle, Bhopal.
3. Office of the Superintending Archaeologist, Archaeological Survey of India, Calcutta Circle, Calcutta.
4. Archaeological Museum, Archaeological Survey of India, Chandragiri Museum, Chandragiri (AP).
5. Office of the Conservation Assistant, Archaeological Survey of India, Mandu (MP).
6. Archaeological Survey of India, Daman.
7. Office of the Superintending Archaeologist, Archaeological Survey of India, Bangalore Circle, Bangalore.
8. Archaeological Survey of India, Vadodara Circle, Vadodara.
9. Archaeological Survey of India, Bhavaneshwar Circle, Bhavaneshwar.

[No. 1-1/93-Hindi]

G. VENKATARAMANI Dy. Secy.

स्वास्थ्य और परिवार कल्याण मंत्रालय

नई दिल्ली, 10 फरवरी, 1994

कां०आ० 632 :—होम्योपैथी केन्द्रीय परिषद अधिनियम, 1973 (1973 का 59) की धारा-3 की उपधारा (1) के खंड (ख) के उपबंधों के अनुसरण में नीचे दी गई सारणी के स्तम्भ (1) में उल्लिखित व्यक्ति को स्तम्भ (2) में उल्लिखित विश्वविद्यालय से निर्वाचित किया गया है।



अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा-3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के स्वास्थ्य और परिवार नियोजन मंत्रालय, स्वास्थ्य विभाग के कां०आ० 482 (अ) तारीख 6 अगस्त, 1974 के द्वारा प्रकाशित अधिसूचना में निम्नलिखित संशोधन करती है, अर्थात् :—

2. उक्त अधिसूचना की सारणी में क्रम संख्या-21 और इससे संबंधित प्रविष्टियों के स्थान पर निम्नलिखित प्रविष्टि रखी जाएगी :—

1	2
"21. डा० मुकुन्द जे० गरीबे, 14, प्रगति कालोनी, वर्धा रोड, नागपुर।	नागपुर विश्वविद्यालय"
[सं० बी०-26018/15/87-होम्यो (सीसीएच)] बी०सी० मेहता, डेस्क अधिकारी (होम्यो)	

पाद टिप्पणी : मूल अधिसूचना संख्या कां०आ० 482(अ) तारीख 6-8-1984 के द्वारा जारी की गई थी तथा इसके बाद इसमें अधिसूचना संख्या बी. 26018/15/87-होम्यो-सी०सी०एच० (II) तारीख 29 अगस्त, 1990 और अधिसूचना सं० बी०-26017/15/87-होम्यो (सीसीएच) तारीख 26-10-1992 द्वारा संशोधन किया गया।

# MINISTRY OF HEALTH AND FAMILY WELFARE

New Delhi, the 10th February, 1994

S.O. 632.—Whereas in pursuance of the provisions of clause (b) of sub-section (1) of section 3 of the Homoeopathy Central Council Act, 1973 (59 of 1973), the person mentioned in column (1) of the Table below has been elected from the University mentioned in column (2).

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the said Act, the Central Government hereby makes the following amendment in the notification of the Government of India in the Ministry of Health & Family Planning, Department of Health, published vide S.O. 482 (E), dated the 6th August, 1974, namely :—

In the Table to the said notification, for serial number 21 and entries relating thereto, the following shall be substituted namely :—

1	2
"21. Dr. Mukund J. Garibe, 14, Pragati Colony, Wardha Road, Nagpur.	Nagpur University."

[No. V. 26018/15/87-Homeo (CCH)]  
B.C. MEHTA, Desk Officer (Homoeo)

Foot Note : The original notification was issued vide No. S.O. 482(E) dated the 6th August, 1974, and subsequently amended by notification No. V. 26018/15/87-Homoeo (CCH) (ii) dated 29th August, 1990 and notification No. V. 26017/ 15/87-Homoeo(CCH) dt. 26th Oct., 1992.

## प्राकृतिक गैस एवं पेट्रोलियम मंत्रालय

नई दिल्ली, 17 फरवरी, 1994

कां०आ० 633 :—जबकि केन्द्र सरकार यह अनुभव करती है कि सार्वजनिक हित में यह आवश्यक है कि खराला से दिल्ली तक पेट्रोलियम पदार्थ लाने के लिए एच.बी.जे. पाइप लाइन परियोजना स्पर लाइन-3 का विस्तार किया जाए। पाइप लाइन गैस अथॉरिटी आफ इंडिया लिमिटेड द्वारा बिछाई जानी चाहिए।

और यह भी अनुभव करती है कि ऐसी पाइप लाइन बिछाने के लिए इसके साथ संलग्न विवरणी में निर्धारित भूमि पर प्रयोक्ता का अधिकार ग्रहण करना आवश्यक है।

अतः पेट्रोलियम एवं खनिज पाइप लाइन (भूमि पर प्रयोक्ता का अधिकार ग्रहण) अधिनियम, 1962 (1962 का 50) के खण्ड 3 के उप खण्ड (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्वारा उस पर प्रयोक्ता का अधिकार ग्रहण करने की मंशा की घोषणा करती है।

यद्यपि कि उक्त भूमि में अपनी रुचि रखने वाला कोई भी व्यक्ति अधिसूचना की तारीख से 21 दिन के भीतर भूमिगत पाइप लाइन बिछाने के विरोध में अपनी आपत्ति सक्षम अधिकारी गैस अथॉरिटी आफ इंडिया लिमिटेड एच.बी.जे. पाइप लाइन परियोजना, विकास दीप बिल्डिंग, 22 स्टेशन रोड, लखनऊ-226019 उ०प्र० में दर्ज करा सकता है।

और ऐसी आपत्ति दर्ज कराते समय किसी भी व्यक्ति को यह विशेष रूप से निर्दिष्ट करना होगा कि वह व्यक्तिगत रूप से अथवा विधि व्यवसायक के माध्यम से अपना मत प्रस्तुत करना चाहता है।

अनुपूरक वाद अनुसूची  
एच०बी०जे०गैस पाइप लाइन प्रोजेक्ट (स्पर लाइन III)

जिल्ला	तहसील	परगना	ग्राम	प्लॉट सं०	क्षेत्रफल	टिप्पणी
1	2	3	4	5	6	7
गजियाबाद	दादरी	दादरी	तालबपुर उर्फ हाथी पुर	404 244	0-0-18 0-2-0	
				2	0-2-18	

[सं० एल - 14016/13/93-जीपी]

अर्धेन्दु सेन, निदेशक

## MINISTRY OF PETROLEUM &amp; NATURAL GAS

New Delhi, the 17th February, 1994

S.O. 633.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of Petroleum from HBJ to Babrala to Delhi an extension of HBJ Pipeline Project SPUR LINE III a Pipeline should be laid by the Gas Authority of India Ltd.

And whereas it appears that for the purpose of laying such pipeline, it is necessary to acquire the right of user in the land described in the schedule annexed hereto;

Now, therefore, in exercise of the powers conferred by sub-section (1) of the Section 3 of the Petroleum & Minerals

Pipelines (Acquisition of Right of User in the land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Provided that any person interested in the said land may, within 21 days from the date of this notification object to the laying of the pipeline under the land to the Competent Authority, Gas Authority of India Ltd. HBJ Project, Vikas-deep Building, 22-Station Road, Lucknow-226019, U.P.

And every person making such an objection shall also state specifically whether he wishes to be heard in person or by legal practitioner.

## Supplementary Case (Schedule)

## H.B.J. Gas Pipeline Project (Spur Line III)

District	Tehsil	Pargana	Village	Plot No.	Area in acres Biswa	Remarks
1	2	3	4	5	6	7
Ghaziabad	Dadri	Dadri	Talabpur Urf Hathipur	404 244	0-0-18 0-2-0	
				2	0-2-18	

[No. L-14016/13/93-G.P.]

ARDHENDU SEN, Director

नई दिल्ली, 17 फरवरी, 1994

का०आ० 634—जबकि केन्द्र सरकार यह अनुभव करती है कि सार्वजनिक हित में यह आवश्यक है कि बबराला से दिल्ली तक पेट्रोलियम पदार्थ लाने के लिए एच.बी.जे. पाइप लाइन परियोजना स्पर लाइन-3 का विस्तार किया जाए + पश्चिम लाइन गैस प्रथॉस्टी ऑफ इंडिया लिमिटेड द्वारा बिछाई जानी चाहिए।

और यह भी अनुमति करती है कि ऐसी पाइप लाइन बिछाने के लिए इसके साथ संलग्न विवरणी में निर्धारित भूमि पर प्रयोक्ता का अधिकार ग्रहण करना आवश्यक है।

अतः पेट्रोलियम एवं खनिज पाइप लाइन (भूमि पर प्रयोक्ता का अधिकार ग्रहण) अधिनियम, 1962 (1962 का 50) के खण्ड 3 के उप खण्ड (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्वारा उस पर प्रयोक्ता का अधिकार ग्रहण करने की मंशा की घोषणा करती है।

बसर्ते कि उक्त भूमि में अपनी हवि रखने वाला कोई भी व्यक्ति अधिसूचना की तारीख से 21 दिन के भीतर भूमिगत पाइप लाइन बिछाने के विरोध में अपनी आपत्ति सक्षम अधिकारी गैस अथॉरिटी ऑफ इंडिया लिमिटेड, एच.बी.जे. पाइप लाइन परियोजना, विकास दीप बिल्डिंग, 22 स्टेशन रोड, लखनऊ-226019 उ० प्र० में दर्ज करा सकता है।

और ऐसी आपत्ति दर्ज कराते समय किसी भी व्यक्ति को यह विशेष रूप से निर्दिष्ट करना होगा कि वह व्यक्तिगत रूप से अथवा विधि व्यवसायक के माध्यम से अपना मत प्रस्तुत करना चाहता है।

#### अनुपूरक वाद अनुसूची

#### स्पर लाइन-III

#### एच.बी.जे. गैस पाइप लाइन प्रोजेक्ट

जनपद	तहसील	परगना	ग्राम	गाटा सं०	क्षेत्रफल	विवरण
1	2	3	4	5	6	7
गाजियाबाद	दादरी	दादरी	विशालपुरी	107	728 मि	0-1-0
					729 मि	
					730 मि	
				258	459 मि	0-0-12
					475 मि	
				2	—	0-1-12

[सं० एल०-14016/13/93-जी०पी०]

गर्भित सेन डिप्टी सचिव

New Delhi, the 17th February, 1994

S.O. 634.-Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of Petroleum from HBJ to Babrala to Delhi an extension of HBJ Pipeline Project SPUR LINE III a Pipeline should be laid by the Gas Authority of India Ltd.

And whereas it appears that for the purpose of laying such pipeline, it is necessary to acquire the right of user in the land described in the schedule annexed hereto;

Now, therefore, in exercise of the powers conferred by sub-section (i) of the Section 3 of the Petroleum & Minerals Pipelines (Acquisition of Right of User in the Land) Act,

1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Provided that any person interested in the said land may, within 21 days from the date of this notification object to the laying of the pipeline under the land to the Competent Authority, Gas Authority of India Ltd. HBJ Project, Vikas-deep Building, 22-Station Road, Lucknow-226019, U.P.

And every person making such an objection shall also state specifically whether he wishes to be heard in person or by legal practitioner.

## Supplimentary Case (Schedule)

## H.B.J. Gas Pipeline Project (Spur Line III)

District	Tehsil	Pargana	Village	Plot No.	Area in Bigha	Remarks
1	2	3	4	5	6	7
Ghaziabad	Dadri	Dadri	Bishnooli	char P. No.	B.B.B.	
				107	728 Min	0-1-0
					729 Min	
					730 Min	
				258	459 Min	0-0-12
					475 Min	
				2	—	0-1-12

[No. L-14016/13/93-G.P.]

ARDHENDU SEN, Director

नई दिल्ली, 17 फरवरी, 1994

का०आ० 635.—जबकि केन्द्र सरकार यह अनुभव करती है कि सार्वजनिक हित में यह आवश्यक है कि बवराला से दिल्ली तक पेट्रोलियम पदार्थ लाने के लिए एच.बी.जे. पाइप लाइन परियोजना स्पर लाइन-3 का विस्तार किया जाए। पाइप लाइन गैस अथॉरिटी आफ इंडिया लिमिटेड द्वारा बिछाई जानी चाहिए।

और यह भी अनुभव करती है कि ऐसी पाइप लाइन बिछाने के लिए इसके साथ संलग्न विवरणी में निर्धारित भूमि पर प्रयोक्ता का अधिकार ग्रहण करना आवश्यक है।

अतः पेट्रोलियम एवं खनिज पाइप लाइन (भूमि पर प्रयोक्ता का अधिकार ग्रहण) अधिनियम, 1962 (1962 का 50) के खण्ड 3 के उपखण्ड (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्वारा उस पर प्रयोक्ता का अधिकार ग्रहण करने की मंशा की घोषणा करती है।

बशर्ते कि उक्त भूमि में अपनी रुचि रखने वाला कोई भी व्यक्ति अधिसूचना की तारीख से 21 दिन के भीतर भूमिगत पाइप लाइन बिछाने के विरोध में अपनी आपत्ति सक्षम अधिकारी गैस अथॉरिटी ऑफ इंडिया लिमिटेड, एच.बी.जे. पाइप लाइन परियोजना, विकास दीप बिल्डिंग, 22-स्टेशन रोड, लखनऊ-226019 उ०प्र० में दर्ज करा सकता है।

और ऐसी आपत्ति दर्ज कराते समय किसी भी व्यक्ति को यह विशेष रूप से निदिष्ट करना होगा कि वह व्यक्तिगत रूप से अथवा विधि व्यवसायक के माध्यम से अपना मन प्रस्तुत करना चाहता है।

## अनुपूरक वाव अनुसूची

## एच.बी.जे. गैस पाइप लाइन प्रोजेक्ट (स्पर लाइन III)

जनपद	तहसील	परगना	ग्राम	गाटा सं०	क्षेत्रफल	विवरण
1	2	3	4	5	6	7
गाजियाबाद	दादरी	दादरी	छपरीला	101	12 मि	0-0-11
				173	71 मि	0-0-12
				2	—	0-1-3

[सं० एन०-14016/13/93-जी. पी.]

अर्धेन्दु सेन, निदेशक

New Delhi, the 17th February, 1994

S.O. 635.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of Petroleum from HBJ to Babrala to Delhi an extension of HBJ Pipeline Project SPUR LINE III a Pipeline should be laid by the Gas Authority of India Ltd.

And whereas it appears that for the purpose of laying such pipeline, it is necessary to acquire the right of user in the land described in the schedule annexed hereto;

Now, therefore, in exercise of the powers conferred by sub-section (i) of the Section 3 of the Petroleum & Minerals Pipelines (Acquisition of Right of User in the Land) Act,

1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein :

Provided that any person interested in the said land may, within 21 days from the date of this notification object to the laying of the pipeline under the land to the Competent Authority, Gas Authority of India Ltd. HBJ Project, Vikas-deep Building, 22-Station Road, Lucknow-226019, U.P.

And every person making such an objection shall also state specifically whether he wishes to be heard in person or by legal practitioner.

**Supplimentary Case (Schedule)  
H.B.J. Gas Pipeline Project (Spurline III)**

District	Tehsil	Pargana	Village	Plot No.	Area in Bigha	Remarks
1	2	3	4	5	6	7
				Char Plot No.	B. B. B.	
Ghaziabad	Dadri	Dadri	Chhaproula	101	129 min	0-0-11
				173	71 min	0-0-12
				2	—	0-1-3

[No. L-14016/13/93—G.P.]  
ARDHENDU SEN, Director

नई दिल्ली, 17 फरवरी, 1994

का०मा० 636—जबकि केन्द्र सरकार यह अनुभव करती है कि सार्वजनिक हित में यह आवश्यक है कि बबराला से दिल्ली तक पेट्रोलियम पदार्थ लाने के लिए एच.बी.जे. पाइप लाइन परियोजना स्परलाइन 3 का विस्तार किया जाए। पाइप लाइन गैस अथॉरिटी आफ इंडिया लिमिटेड द्वारा बिछाई जानी चाहिए।

और यह भी अनुभव करती है कि ऐसी पाइप लाइन बिछाने के लिए इसके संलग्न विवरणी में निर्धारित भूमि पर प्रयोक्ता का अधिकार ग्रहण करना आवश्यक है।

अतः पेट्रोलियम एवं खनिज पाइप लाइन (भूमि पर प्रयोक्ता का अधिकार ग्रहण) अधिनियम, 1962 (1962 का 50) के खण्ड 3 के उपखण्ड (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्वारा उस पर प्रयोक्ता का अधिकार ग्रहण करने की मंशा की घोषणा करती है।

वर्णित कि उक्त भूमि में अपनी रुचि रखने वाला कोई भी व्यक्ति अधिसूचना की तारीख से 21 दिन के भीतर भूमिगत पाइप लाइन बिछाने के विरोध में अपनी आपत्ति सक्षम प्राधिकारी, गैस अथॉरिटी ऑफ इंडिया लिमिटेड, एच.बी.जे. पाइप लाइन परियोजना, विकास दीप बिल्डिंग, 22 स्टेशन रोड, लखनऊ-226019 उ०प्र० में दर्ज करा सकता है।

और ऐसी आपत्ति दर्ज कराते समय किसी भी व्यक्ति को यह विशेष रूप से निर्दिष्ट करना होगा कि वह व्यक्तिगत रूप से अथवा विधि व्यवसायक के माध्यम से अपना मत प्रस्तुत करना चाहता है।

**अनुपूरक वाच अनुसूची  
एच.बी.जे. गैस पाइप लाइन प्रोजेक्ट (स्पर लाइन III)**

जनपद	तहसील	परगना	ग्राम	गाटा सं०	क्षेत्रफल	विवरण
1	2	3	4	5	6	7
गाजियाबाद	गाजियाबाद	डाहना	शाहपुर बमेटा	1344	बी वि. वि	
					0-0-4	
				1	0-0-4	

[सं. एल. - 14016/13/93—जी.पी.]

अर्धेन्दु सेन, निदेशक

New Delhi, the 17th February, 1994

S.O. 636.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of Petroleum from HBJ to Babrala to Delhi an extension of HBJ Pipeline Project SPUR LINE III a Pipeline should be laid by the Gas Authority of India Ltd.

And whereas it appears that for the purpose of laying such pipeline, it is necessary to acquire the right of user in the land described in the schedule annexed hereto;

Now, therefore, in exercise of the powers conferred by sub-section (i) of the Section 3 of the Petroleum & Minerals Pipelines (Acquisition of Right of User in the Land) Act,

1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein :

Provided that any person interested in the said land may, within 21 days from the date of this notification object to the laying of the pipeline under the land to the Competent Authority, Gas Authority of India Ltd. HBJ Project, Vikas-deep Building, 22-Station Road, Lucknow-226019, U.P.

And every person making such an objection shall also state specifically whether he wishes to be heard in person or by legal practitioner.

**Supplementary Case (Schedule)**  
**H.B.J. Gas Pipeline Project (Spurline III)**

District	Tehsil	Pargana	Village	Plot No.	Area in Bigha	Remarks
1	2	3	4	5	6	7
Ghaziabad	Ghaziabad	Dasna	Shahpur Wameta	1344	B. B. B. 0-0-4	
				1	0-0-4	

[No. L-14016/13/93-G.P.]  
ARDHENDU SEN, Director

नई दिल्ली, 17 फरवरी, 1994

का०आ० 637—यतः पेट्रोलियम और खनिज पाइप लाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) के अधीन भारत सरकार के पेट्रोलियम एवं प्राकृतिक गैस अधिसूचना का०आ० सं० 2071 तारीख 3-8-91 द्वारा केन्द्रीय सरकार ने उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमियों के उपयोग के अधिकार को पाइप लाइनों को बिछाने के लिए अर्जित करने का अपना आशय घोषित कर दिया था।

और यतः सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन सरकार को रिपोर्ट दे दी है।

और आगे यतः केन्द्रीय सरकार ने उक्त रिपोर्ट पर विचार करने के पश्चात् इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमियों में उपयोग का अधिकार अर्जित करने का विनिश्चय किया है।

अब अतः उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्ति का प्रयोग करते हुए केन्द्रीय सरकार घोषित करती है कि इस अधिसूचना में संलग्न अनुसूची विनिर्दिष्ट उक्त भूमियों में उपयोग का अधिकार पाइपलाइन बिछाने के प्रयोजन के लिए एतद्वारा अर्जित किया जाता है।

और आगे उस धारा की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार निर्देश देती है कि उक्त भूमियों में उपयोग का अधिकार केन्द्रीय सरकार में निहित होने के बजाय भारतीय गैस प्राधिकरण लि० में सभी बाधाओं से मुक्त रूप में घोषणा के प्रकाशन की इस तारीख को निहित होगा।

**अनुपूरक वाद अनुसूची**  
**एच.बी.जे. गैस पाइप लाइन प्रोजेक्ट (स्पर लाइन III)**

जनपद	तहसील	परगना	ग्राम	गाटा सं०	क्षेत्रफल	विवरण
1	2	3	4	5	6	7
गाजियाबाद	दादरी	दादरी	नूरपुर	173	0-13-0	
				192	0-3-0	
				269	0-7-0	
				3	01-3-0	

[सं० एल० 14016/13/93-जी०पी०]

अर्धेन्दु सेन, निदेशक

New Delhi, the 17th February, 1994

S.O. 637.—Whereas by notification of the Government of India in the Ministry of Petroleum S.O. 2071 dated 3-8-91 under sub-section (1) of section of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land Act, 1962 (50 of 1962), the Central Government declared its intention to acquire the right of user in the lands specified in the schedule appended to that notification for purpose of laying pipeline;

And whereas The Competent Authority has under Sub-section (1) of Section 6 of the said Act, submitted report to the Government;

And further whereas the Central Government has, after considering the said report, decided to acquire the right of

user in the lands specified in the schedule appended to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (1) of the Section 6 of the said Act, the Central Government hereby declares that the right of user in the said lands specified in the schedule appended to this notification hereby acquired for laying the pipeline;

And further in exercise of power conferred by sub-section (4) of the section, the Central Government directs that the right of user in the lands shall instead of vesting in Central Government vests on this date of the publication of this declaration in the Gas Authority of India Limited free from encumbrances.

## Supplementary Case (Schedule)

## H.B.J. Gas Pipeline Project

District	Tehsil	Pargana	Village	Plot No.	Area in Bigha	Remarks
1	2	3	4	5	6	7
Ghaziabad	Dadri	Dadri	Noorpur	173	0-13-0	
				192	0-3-0	
				269	0-7-0	
				3	01-3-0	

[No. L-14016/13/93-G.P.]

ARDHENDU SEN, Director

नई दिल्ली, 17 फरवरी, 1999

का०आ० 638 —जबकि केन्द्र सरकार यह अनुभव करती है कि सार्वजनिक हित में यह आवश्यक है कि पेट्रोलियम पदार्थ एवं प्राकृतिक गैस लाने के लिये एच०बी०जे० अपप्रेडेशन गैस पाइप लाइन गैस अथॉरिटी आफ इण्डिया लिमिटेड द्वारा बिछाया जाना है।

और यह भी अनुभव करती है कि उस कार्य के लिये इसके साथ संलग्न विवरणी में निर्धारित भूमि पर प्रयोक्ता का अधिकार ग्रहण करना आवश्यक है।

अतः पेट्रोलियम एवं खनिज पाइप लाइन (भूमि पर प्रयोक्ता का अधिकार ग्रहण) अधिनियम, 1962 (1962 का 50) के खण्ड 3 के उपखण्ड (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्वारा उस पर प्रयोक्ता का अधिकार ग्रहण करने की मंशा की घोषणा करती है।

बशर्ते कि उक्त भूमि में अपनी रुखि रखने वाला कोई भी व्यक्ति अधिसूचना की तारीख से 21 दिन के भीतर भूमिगत पाइप लाइन बिछाने के विरोध में अपनी आपत्ति सक्षम प्राधिकारी गैस अथॉरिटी आफ इण्डिया लिमि० एच०बी०जे० अपप्रेडेशन गैस पाइप लाइन प्रोजेक्ट, पी०डी० आई०एस० बिल्डिंग, ए-14, सेक्टर-1 नौएडा, गाजियाबाद (उ०प्र०) में दर्ज करा सकते हैं।

और ऐसी आपत्ति दर्ज कराते समय किसी भी व्यक्ति को यह विशेष रूप से निश्चित करना होगा कि वह व्यक्तिगत रूप से अथवा विधि व्यवसायक के माध्यम से अपना मत प्रस्तुत करना चाहता है।

## बाव अनुसूची

एच०बी०जे० ग्रप ग्रेडेशन गैस पाइप लाइन प्रोजेक्ट

जिला	तहसील	परगना	ग्राम	गाटा संख्या	अर्जित क्षेत्र० हेक्टेयर में	अन्य विवरण
1	2	3	4	5	6	7
आगरा	किरावली	किरावली	सहनपुर	76	0.2870	
				81	0.0060	चकरोड
				88	0.1020	
				89	0.1694	
				87	0.0322	
				90	0.1058	
				91	0.0060	चकरोड
				92	0.8240	
				75	0.0280	चकरोड
				67	0.1000	
				74	0.4980	
				191	0.0060	चकरोड
				195	0.1392	
				208	0.1250	
				207	0.0360	चकरोड
				206	0.8700	
				196	0.0050	चकरोड
				201	0.0204	
				223	0.0060	चकरोड
				224	0.4500	
				257	0.0060	चकरोड
				324	0.4824	
				323	0.0088	चकरोड
				320	0.0880	
				270	0.0088	चकरोड
				266	0.0360	
				267	0.1980	
				269	0.1196	
				317	0.0144	
				271	0.0036	चकरोड
				278	0.1170	
				279	0.4020	
				281	0.1440	
				282	0.0060	चकरोड
				291	0.3780	
				293	0.2700	



1	2	3	4	5	6	7
		सहज पुर--(जारी)	295	0.0060		चकरोड
			294	0.3300		
			298	0.1090		
			308	0.5220		
			311	0.0180		बंधा
			431	0.1900		
			432	0.1680		
			433	0.2400		
			441	0.2700		
			463	0.0860		
			442	0.0960		
			443	0.0108		
			457	0.0180		चकरोड
			464	0.0380		
			465	0.2440		
			466	0.1440		
			467	0.1780		
			468	0.2140		
			469	0.0060		चकरोड
			470	0.3513		
			472	0.3414		
			473	0.0640		
			475	0.3400		
			719	0.0600		रोड
			727	0.1630		
			728	0.0180		
			732	0.0600		
			733	0.0080		चकरोड
			737	0.1600		
			738	0.0720		
			739	0.0540		
			740	0.0540		
			741	0.1209		
			803	0.0270		
			777	0.2912		रास्ता
			745	0.0168		
			803	0.0060		चकरोड
			860			
			802	0.5935		
			796	0.1415		
			795	0.0288		
			797	0.0096		
			794	0.2324		

1	2	3	4	5	6	7
		सहनपुर--( जारी )	808	0.0108	चक्रोड	
			809	0.4735		
			781	0.0480		
		सम्पूर्ण योग	81	12.7089	हेक्टेयर	
		या		31.391	एकड़	
		या		50-04-10	बीघा	

[सं. एल. 14016/21/93--जी०पी०]

अर्धेन्दु सेन, निदेशक

New Delhi, the 17th February, 1994

S.O. 638.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of Petroleum and Natural Gas of HBJ UP Gradation Gas Pipeline to be laid by the Gas Authority of India Ltd.;

And whereas it appears that for the purpose of this laying it is necessary to acquire the right of user in the land described in the schedule annexed hereto;

Now, therefore, in exercise of the powers conferred by sub-section (1) of the Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right User in the land) Act, 1962

(50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Provided that any person interested in the said land may, within 21 days from the date of this notification object to the laying of the pipeline under the land to the Competent Authority, Gas Authority of India Ltd. HBJ UP Gradation Pipeline Project, P.D.I.L. Building A-14, Sector-1 NOIDA, Ghaziabad U.P.

And every person making such an objection shall also state specifically whether he wishes to be heard in person or by legal practitioner.

[No. L-14016/21/93 G.P.]

ARDHENDU SEN, Director

## CASE SCHEDULE

## H.B.J. UP-GRADATION GAS PIPE LINE PROJECT

District	Tehsil	Pargana	Village	Plot No.	Acquired Area in Hectare	Remark
1	2	3	4	5	6	7
Agra	Kiraoli	Kiraoli	Sahanpur	76	0.2870	
				81	0.0060	Chakroad
				88	0.1020	
				89	0.1694	
				87	0.0322	
				90	0.1058	
				91	0.0060	Chakroad
				92	0.8240	
				75	0.0280	Chakroad
				67	0.1000	
				74	0.4980	
				191	0.0060	Chakroad
				195	0.1392	
				208	0.1280	
				207	0.0360	Chakroad
				206	0.8700	
				196	0.0050	Chakroad
				201	0.0204	

1	2	3	4	5	6	7
			Sahanpur	223	0.0060	Chakroad
				224	0.4500	
				257	0.0060	Chakroad
				324	0.4824	
				323	0.0088	Chakroad
				320	0.0880	
				270	0.0088	Chakroad
				266	0.0360	
				267	0.1980	
				269	0.1196	
				317	0.0144	
				271	0.0036	Chakroad
				278	0.1170	
				279	0.4020	
				281	0.1440	
				282	0.0060	Chakroad
				291	0.3780	
				293	0.2700	
				295	0.0060	Chakroad
				294	0.3300	
				298	0.1090	
				308	0.5220	
				311	0.0180	Bandha
				431	0.1900	
				432	0.1680	
				433	0.2400	
				441	0.2700	
				463	0.0860	
				442	0.0960	
				443	0.0108	
				457	0.0180	Chakroad
				464	0.0380	
				465	0.2440	
				466	0.1440	
				467	0.1780	
				468	0.2140	
				469	0.0060	Chakroad
				470	0.3513	
				472	0.3414	
				473	0.0640	
				475	0.3400	
				719	0.0600	Road
				727	0.1630	
				728	0.0180	
				732	0.0600	
				733	0.0080	Chakroad
				737	0.1600	
				738	0.0720	
				739	0.0540	
				740	0.0540	
				741	0.1209	
				803	0.0270	
				777	0.2912	Rasta
				745	0.0168	

1	2	3	4	5	6	7.
			Sahampur	803	0.0060	Chakroad
				860		
				802	0.5935	
				796	0.1415	
				795	0.0288	
				797	0.0096	
				794	0.2324	
				808	0.0108	Chakroad
				809	0.4735	
				781	0.0480	
	G. Total			81	12.7089	Hector
				OR	31.391	Acres
				OR	50-04-10	Bigha

[No. L-14016/21/93-G.P.]  
ARDHENDU SEN, Director

नई दिल्ली, 17, फरवरी 1994

कांआ० 639:—जबकि केन्द्र सरकार यह अनुभव करती है कि सार्वजनिक हित में यह आवश्यक है कि पेट्रोलियम पदार्थ एवं प्राकृतिक गैस लाने के लिये एच०बी०जे० अपग्रेडेशन गैस पाइप लाइन, गैस अथारिटी आफ इण्डिया लिमिटेड द्वारा विछाया जाना है।

और यह भी अनुभव करती है कि उस कार्य के लिये इसके साथ संलग्न विवरणी में निर्धारित भूमि पर प्रयोक्ता का अधिकार ग्रहण करना आवश्यक है।

अतः पेट्रोलियम एवं खनिज पाइप लाइन (भूमि पर प्रयोक्ता का अधिकारग्रहण) अधिनियम, 1962 (1962 का 50) के खण्ड 3 के उपखण्ड (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्वारा उस पर प्रयोक्ता का अधिकार ग्रहण करने की मंशा की घोषणा करती है।

बशर्ते कि उक्त भूमि में अपनी रुचि रखने वाला कोई भी व्यक्ति अधिसूचना की तारीख से 21 दिन के भीतर भूमिगत पाइप लाइन बिछाने के विरोध में अपनी आपत्ति सक्षम प्राधिकारी गैस अथारिटी आफ इण्डिया लिमि० एच०बी०जे० अपग्रेडेशन गैस पाइप लाइन प्रोजेक्ट, पी०डी०आई०एल० बिल्डिंग, ए-14, सेक्टर-1 नईएन, गाजियाबाद (उ०प्र०) में दर्ज करा सकते हैं।

और ऐसी आपत्ति दर्ज कराते समय किसी भी व्यक्ति को यह विवेक रूप से निर्दिष्ट करना होगा कि वह व्यक्तिगत रूप से अथवा विश्वि व्यवसायक के माध्यम से अपना मत प्रस्तुत करना चाहता है।

वाद अनुमूर्ची

एच.बी.जे. अपग्रेडेशन गैस पाइप लाइन प्रोजेक्ट

जिला	तहसील	परगना	मौजा	गाटा सं	अर्जित क्षेत्रफल हेक्टेयर में	अन्य विवरण
1	2	3	4	5	6	7
आगरा	किरावली	किरावली	गाजौली	367	0.0060	चकरोड
				368	0.1480	
				371	0.0040	
				372	0.0830	

	5	6	7
	373	0.0240	
	374	0.0060	चकरोड
	375	0.2360	
	378	0.1510	
	379	0.2260	
	383	0.1320	
	391	0.0060	चकरोड
योग	11	1.0620	हेक्टेयर
या		2.624	एकड़
या		04-03-19	बीघा

[सं. एल-14016/21/93-जी.पी.]

अर्धेन्दु सेन, निदेशक

New Delhi, the 17th February, 1994

S.O. 639.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of Petroleum and Natural Gas of HBJ UP Gradation Gas Pipe line to be laid by the Gas Authority of India Ltd.

And whereas it appears that for the purpose of this laying it is necessary to acquire the right of user in the land described in the schedule annexed hereto;

Now, therefore, in exercise of the powers conferred by sub-section (i) of the Section 3 of the Petroleum & Minerals Pipelines (Acquisition of Right of User in the Land) Act, 1962

(50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein :

Provided that any person interested in the said land may, within 21 days from the date of this notification object to the laying of the pipeline under the land to the Competent Authority, Gas Authority of India Ltd. HBJ UP Gradation Pipeline Project, P.D.I.L. Building A-14, Sector-1 NOIDA, Ghaziabad U.P.

And every person making such an objection shall also state specifically whether he wishes to be heard in person or by legal practitioner.

#### SCHEDULE H.B.J. UP-GRADATION GAS PIPE LINE PROJECT

District	Tehsil	Paragana	Village	Plot No.	Acquired Area in Hectare	Remarks
1	2	3	4	5	6	7
Agra	Kiraoli	Kiraoli	Jajauli	367	0.0060	Chackrod
				368	0.1480	
				371	0.0040	
				372	0.0830	Chackrod
				373	0.0240	
				374	0.0060	
				375	0.2360	
				378	0.1510	
				379	0.2660	
				383	0.1320	Chackrod
				391	0.0060	
Total				11	1.0620	Hectare
				OR	2.624	Acre
				OR	04.03-19	Bigha

[No. L-14016/21/93-G.P.]

ARDHENDU SEN, Director

नई दिल्ली, 17 फरवरी, 1994

का.प्रा. 640 :—जबकि केन्द्र सरकार यह अनुभव करती है कि सार्वजनिक हित में यह आवश्यक है कि पेट्रोलियम पदार्थ एवं प्राकृतिक गैस लाने के लिये एच.बी.जे. अपग्रेडेशन गैस पाइप लाइन गैस अथारिटी आफ इण्डिया लिमिटेड द्वारा बिछाया जाना है।

और यह भी अनुभव करती है कि उस कार्य के लिये इसके साथ संलग्न विवरणी में निर्धारित भूमि पर प्रयोक्ता का अधिकार ग्रहण करना आवश्यक है।

अतः पेट्रोलियम एवं खनिज पाइप लाइन (भूमि पर प्रयोक्ता का अधिकार ग्रहण अधिनियम, 1962) (1962 का 50) के खण्ड 3 के उपखण्ड (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्द्वारा उस पर प्रयोक्ता का अधिकार ग्रहण करने की संज्ञा की घोषणा करती है।

बशर्ते कि उक्त भूमि में अपनी रुचि रखने वाला कोई भी व्यक्ति अभिसूचना की तारीख में 21 दिन के भीतर भूमिगत पाइप लाइन बिछाने के विरोध में अपनी आपत्ति सक्षम प्राधिकारी गैस अथारिटी आफ इण्डिया लिमि. एच.बी.जे. अपग्रेडेशन गैस पाइप लाइन प्रोजेक्ट, पी.डी.आई.एल. बल्डिंग, ए 14, सेक्टर 1 नोएडा, गाजियाबाद (उ.प्र.) में दर्ज करा सकते हैं।

और ऐसी आपत्ति दर्ज कराते समय किसी भी व्यक्ति को यह विशेष रूप से निविष्ट करना होगा कि वह व्यक्तिगत रूप से अथवा विधि व्यवसायक के माध्यम से अपना मत प्रस्तुत करना चाहता है।

## अनुसूची

एच.बी.जे. अपग्रेडेशन गैस पाइप लाइन प्रोजेक्ट

जिला	तहसील	परगना	ग्राम	गाटा सं.	अर्जित क्षेत्र हेक्टेयर में	अन्य विवरण
1	2	3	4	5	6	7
आगरा	किरावली	किरावली	सिरौली	2	0.1860	
				4	0.0060	चकरोड
				6	0.2400	
				7	0.0060	
				9	0.0720	
				10	0.4724	
				11	0.0080	चकरोड
				17	0.0032	
				16	0.5746	
				15	0.0828	
				37	0.0600	
				45	0.0216	
				44	0.5394	
				43	0.0120	चकरोड
				46	0.0432	
				42	0.1380	
				76/1	0.1800	
				76/2	0.5656	
				77	0.1974	
				75	0.1200	
				70	0.0250	
				69	0.0800	
				68/1	0.0050	

1	2	3	4	5	6	7
				68/2	0.1400	
				122/9	0.0900	
				122/3	0.1500	
				122/8	0.0720	
				122/5	0.1104	
				122/7	0.1224	
				122/19	0.5532	नदी
				178	0.0360	पहाड़ी भाग
				104	0.0624	
योग				32	4.9746	हेक्टेयर
				या	12.287	एकड़
				या	19-13-04	बीघा

[सं एल-14016/21/93-जी पी]

अर्धेन्दु सेन, निदेशक

New Delhi, the 17th February, 1994

S.O. 640.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of Petroleum and Natural Gas of HBJ UP Gradation Gas Pipe line to be laid by the Gas Authority of India Ltd.

And whereas it appears that for the purpose of this laying it is necessary to acquire the right of user in the land described in the schedule annexed hereto;

Now, therefore, in exercise of the powers conferred by sub-section (i) of the Section 3 of the Petroleum & Minerals Pipelines (Acquisition of Right User in the land) Act, 1962

(50 of 1962), the Central Government hereby declares its intension to acquire the right of user therein;

Provided that any person interested in the said land may, within 21 days from the date of this notification object to the laying of the pipeline under the land to the Competent Authority, Gas Authority of India Ltd. HBJ UP Gradation Pipeline Project, P.D.I.L. Building A-14, Sector-1 NOIDA, Ghaziabad U.P.

And every person making such an objection shall also state specifically whether he wishes to be heard in person or by legal practitioner.

## SCHEDULE

## H.B.J. UP-GRADATION GAS PIPE LINE PROJECT

District	Tehsil	Pargana	Village	Plot No.	Acquired Area in Hectare	Remarks
1	2	3	4	5	6	7
Agra	Kiraoli	Kiraoli	Sirauli	2	0.1860	
				4	0.0060	Chakroad
				6	02.400	
				7	0.0060	
				9	0.0720	
				10	0.4724	
				11	0.0080	
				17	0.0032	
				16	0.5746	
				15	0.0828	
				37	0.0600	
				45	0.0216	
				44	0.5394	

1	2	3	4	5	6	7
Agra	Kiraoli	Kiraoli	Sirauli	43	0.01200	Chakroad
				46	0.0432	
				42	0.1380	
				76/1	0.1800	
				76/2	0.5656	
				77	0.1974	
				75	0.1200	
				70	0.0250	
				69	0.0800	
				68/1	0.0050	
				68/2	0.1400	
				122/9	0.0900	
				122/3	0.1500	
				122/8	0.0720	
				122/5	0.1104	
				122/7	0.1224	
				122/19	0.5532	River
				178	0.0360	Hil Area
				104	0.0624	
			Total	32	4.9746	
				OR	12.287	Acres
				OR	19-13-04	Bigha

[No. L-14016/21/93-G.P.]

ARDHENDU SEN, Director

## श्रम मंत्रालय

नई दिल्ली, 4 फरवरी, 1994

का.प्र. 641 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार फूड कारपोरेशन आफ इंडिया के प्रबन्धतंत्र से संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कलकत्ता के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-2-94 को प्राप्त हुआ था।

[संख्या एल-42011/18/75-डी-II (बी)]

राजा लाल, डेस्क अधिकारी

MINISTRY OF LABOUR

New Delhi, the 4th February, 1994

S.O. 641.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Calcutta as shown in the Annexure, in the industrial dispute between the employers in relation to the management of FCI and their workmen, which was received by the Central Government on 2-2-94.

[No. L-42011/18/75-D.II(B)]

RAJA LAL, Desk Officer

## ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
AT CALCUTTA

Reference No. 13 of 1977

## Parties :

Employers in relation to the Management of Food Corporation of India.

## AND

Their Workmen

## Present :

Mr. Justice Manash Nath Roy, Presiding Officer.

## Appearance :

On behalf of Management.—Mr. B. K. Ghosh, Advocate with Mr. P. Pathak, Advocate.

On behalf of Workmen represented by F.C.I. Workers' Union.—Mr. A. Das Chowdhury, Advocate with Mr. M. Sinha, Advocate.

On behalf of 203 Workmen represented Separately.—Mr. P. Bhanja Chowdhury, Advocate with Mr. A. K. Das, Advocate.

STATE : West Bengal

INDUSTRY : Food Corpn.

## AWARD, PART-I

By an order of Reference made under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the said Act), being order No. L-42011(18)/75-D.II(13) dated 23rd May, 1977, the dispute to the effect "whether the dis-



continuance of employment of 464 labours of their Siliguri Depot with effect from July 21, 1975, by the Management of Food Corporation of India is lawful and justified? If not, to what relief are the workers entitled?" was referred for adjudication before this Tribunal.

2. The Management of Food Corporation of India will hereafter be referred to as the said Corporation and the Food Corporation of India Workers' Union, which alleged to have espoused the cause of the Workmen and represented them, as the said Union.

3. After completion of pleadings and evidence of the parties as lead, Mr. Justice R. Bhattacharya, a retired Judge of the Hon'ble High Court of Calcutta, as Presiding Officer, made his Award on 29th August, 1980, holding on consideration of evidence amongst others, that the workmen concerned were not the employees of the said Corporation and they were not entitled to any relief.

4. From such determination, the said Union went in Appeal to the Hon'ble Supreme Court of India [Civil Appeal No. 1055 (N.L.) of 1981] and on 28th February, 1985, the said appeal was allowed, by directing amongst others the following :—

"In view of the discussion, this appeal has to be allowed and the award of the Tribunal rejecting the reference and denying the benefits must be quashed and set aside and an award be made that the aforementioned 464 workmen who had become the workmen of the Corporation continued to the workmen employed by the Corporation and shall be entitled to all the rights, liabilities, obligations and duties as prescribed for the workmen by the Corporation. A formal award to that effect shall be made by the Tribunal.

As it was stated before this Court that these workmen continued to be employed, undoubtedly under the contractor since the illegal change was introduced, the question of paying backwages does not arise. The Tribunal, however, must satisfy itself before making the final award whether any workman was denied work and consequently wages. The Corporation shall pay costs quantified at Rs. 10,000 to the appellant-Union."

5. Thereafter, Hon'ble Mr. Justice Sukumar Chakraborty, a Retired Judge of the Calcutta High Court, as Presiding Officer, on consideration of the directions of the Hon'ble Supreme Court of India, by an Award dated 24th November, 1988, directed the following interalia amongst others :—

"18. In view of what has been stated and discussed above, before I go into the determination of the question with regard to the back wages to be obtained by the eligible workmen concerned on proper materials to be produced before this Tribunal, this Tribunal in deference to the direction of the Hon'ble Supreme Court in the penultimate first paragraph, makes the formal award as directed by the Hon'ble Supreme Court by way of interim award in the following manner.

19. The 464 workmen named and mentioned in the list annexed to the written statement of the workmen and referred to by the Hon'ble Supreme Court in their judgement in Civil Appeal No. 1055 (NL) of 1981, who has become the workmen of the Corporation continue to be the workmen employed by the Corporation and shall be entitled to all the rights, liabilities, obligations and duties as prescribed for the workmen by the Corporation."

5. It should be noted that there was no specific direction by the Hon'ble Supreme Court of India, as to how the identities to be proved and established. To this, the learned representatives of the parties also agreed.

6. Before the said Learned Presiding Officer, on the submissions of the parties on the determination of the Hon'ble Supreme Court of India, a point arose as to what should be the meaning of the words "Final Award" and after

scanning and considering the said order, the said Presiding Officer has devided those directions in two parts, (i) those containing in the penultimate first paragraph, and (ii) those containing in the penultimate second paragraph of the said judgement (hereinafter referred to as the said first and second paragraph respectively). The findings and observations of the said Presiding Officer will appear from paragraphs 13 and 14 of his Award. Paragraph 16 of the Award will show, what was meant by him and ultimately be made his findings quoted in paragraph 5 above. It should be of India in Civil Appeal No. 10029 of 1989, whereupon, an Interim stay was granted to the following effect :

From such determination, the said Union approached the Hon'ble High Court of Calcutta in Matter No. 160 of 1989 and from the order made therein, on 19th April 1989, the said Corporation appealed to the Hon'ble Supreme Court of India in Civil Appeal No. 10029 of 1989, whereupon, an Interim stay was granted to the following effect :

"...Interim stay of the Award with regard to workers other than 203 whose identity is not in dispute.

We also direct the Tribunal to proceed to make an enquiry :

- (i) Whether the remaining workmen were really employed as on the relevant date.
- (ii) Whether any of them are dead or left the employment voluntarily, and
- (iii) Whether any of the workmen denied work and consequently wages.

It is hoped that the Tribunal will make the enquiry with opportunity to parties as early as possible and not later than three months.

List the matter immediately after three months."

8. Thereafter, the said Interim Award was stayed on 19th February, 1991, by directing as under :

"By order of this Court dated 20-1-90, the Tribunal was directed to identify 464 workmen, reversing the interim award then made by the Tribunal.

We have been informed by counsel for the applicants that the Presiding Officer of the Tribunal has since retired and the Government has not appointed any other Presiding Officer in his place. We direct the State Government to appoint the Presiding Officer of the Tribunal within 10 days from the date of receipt of this order and further direct the Presiding Officer to give priority to the identification of the workmen in this case, and the whole process of identification shall be completed with an appropriate order within six months from today. It is, however, directed that as and when identification of workmen takes place, the Tribunal shall direct the management to take the workmen identified, without waiting for completing the entire process."

9. My predecessor in office, with notice to the parties heard the matter again and that in terms of the directions of the Hon'ble Supreme Court of India and before his retirement, he could complete the hearing of 112 witnesses.

10. After joining this Tribunal on 8th April, 1991, first I heard the evidence of WW Nos. 113 to 163 excepting WW No. 156, and the parties invited me to give my Order on the basis of the evidence, as and when they will be available. I could not agree to such invitation, as I am of the view that such piecemeal order should be avoided in the case of the present nature. I am making my findings on the evidence as available, in the light of the directions of the Hon'ble Supreme Court of India. In fact, I propose first, to deal with the evidence and the respective contentions of the parties in respect of those WW Nos. 113 to 163 excepting WW No. 156 as I had the occasion to hear them and look at their demeanour. Since, I had no such occasion in respect of the witnesses examined by my predecessor-in-office, I shall give my findings on their evidence, later, on going through and considering them thoroughly.

11. The evidence on behalf of the workmen were practically on the same line and tune, excepting some cases,

whose numbers are few. Affidavits, practically on the same line and term were filed by the workmen. They lead their evidence on those affidavits and were cross-examined on behalf of the said Corporation.

12. To establish their identity and residence, the workmen relied firstly on the Ration cards (pratically all duplicate xerox copies), the original duplicate copies whereof were returned. after comparing with the xerox copies, secondly, on certificates issued by some Commissioners of the Siliguri Municipality and in some rare occasions, certificate issued by Panchayat and other authorities and thirdly, on some receipts in some cases. It was the general and practically the uniform case of the employees that they had worked with the said Corporation upto 1975 and thereafter, because of such workings, they were re-employed/re-appointed by the said Corporation for some months in 1978 and to prove such fact, excepting in one or two cases, reliance was firstly placed on the Identity/Permit cards, said to be issued by the said Corporation under the signature of their officers like Dutta Babu (S. Dutta) and Banerjee Saheb (J. M. Banerjee), who is dead. The employees have not of course been able to give full names of those officers. Secondly, they have relied on Permit Slips, which were invariably and uniformly written at the back side of the gate-pass forms and it was alleged that they were issued by one Pal Saheb, whose full name could not also be disclosed by them. The said Pal Saheb, who was admittedly an officer of Food Corporation of India (CFI) and has retired sometime ago. Thirdly, reliance was placed on payment sheets, without being duly proved. The workmen also produced some Union subscription receipts in isolation and more particularly not serially and it was their uniform case that they were members of the said Union from 1972, or before that and other receipts, they have lost. Excepting oral statements, no further positive proof was tendered for establishing such case.

13. Before dealing with the case as sought to be made out by the workmen, I think some portions of the evidence of Shri Dutta and Shri Jana, who deposed to testify the signatures of Shri Banerjee, who is admittedly dead and on the identity/permit cards as claimed to have been issued by them, should be reproduced, for consideration, as they would go a long way to establish, if the cards as claimed to have been issued by those officials, have really been proved or if through them, the identity of the workmen have actually been established.

14. Shri Subir Dutta witness No. 2 has stated to be the Chief Labour Inspector of Food Corporation of India and, was posted at Jalpaiguri Depot. He has also claimed to have been posted at the District Office of the Food Corporation of India at Siliguri from 24th February, 1978 to 22nd November, 1984, as Chief Labour Inspector and has also claimed to have occasionally moved at the Siliguri Depot, during his tenure and further, to visit occasionally, the godowns for inspection under the directions of his superiors. He has stated that in such circumstances, he has visited C.S.D. godowns and not G.F.D. godowns. It must be noted that such directions from the superior officers have neither been produced nor proved.

15. This witness, has also stated that he knew Shri I. N. Banerjee, an official of Food Corporation of India and he has heard that Shri Banerjee was attached to C.F.I. godown, but he has frankly admitted that he could not recollect whether he met him and was also not aware whether the said Shri Banerjee was dead or alive. In fact, the evidence is otherwise viz. the said Shri Banerjee was dead, as would appear from the evidence of WW-4 Shri Barindra Kumar Jana.

The witness WW-2 has stated that permit/identity cards Exts. W-115, W-1155 were not issued by him. It was also his evidence that permit/identity card Ext. W-115 was not issued by the Food Corporation of India and he did not subscribe his signature on the photograph as affixed. It was his evidence that permit/identity cards Exts. W-117, W-138, W-189, and W-1159 bear the rubber stamp, reading "S. Dutta, Chief Labour Inspector of F.C.I.". But he has not said anything about his signature. It was his evidence that permit/identity card Ext. W-142 bears illegible rubber

stamp and he was not certain if the said stamp was of Food Corporation of India. He has stated that identity/permit card Ext. W-1209, although was under his signature, but the same was not under the signature of any official of F.C.I. or their seal. He was not also sure about the signature of the Union officials in identity/permit card Exts. W-117, W-138, W-159 and W-189 and has said that they are under the believed signatures of F.C.I. officials and those of Exts. W-111 to W-114, W-116 to W-114, W-116, W-118 to W-132, W-134 to W-137, W-139 to W-141, W-143 to W-158, W-160 to W-188, W-190 to W-1111, W-1113 to W-1154, W-1146, W-1177, W-1186, W-1147, W-1226, W-1234 were issued under his signature and if was his categorical evidence that identity/permit cards Exts. W-1203, W-115, W-141, W-1126, W-1105, W-1115, W-1145, W-1200, W-1205, W-1222, W-1223, W-1224, W-1225, W-1227, W-1245 and W-1249 were not under the signature of Deo Prasad Paswan and in some cases, they were under his believed signatures.

16. It was the categorical evidence of this witness that even though there was an Assistant Manager in C.S.D. godown, yet he was directed by the District Manager Shri D. P. Mukherjee to sign the identity/permit cards as Food Corporation of India Official and he did so and he was also told by the said District Manager, to counter sign the permit/identity cards, which will be given to him by Deo Prasad Paswan, as Secretary of the Food Corporation of India Workers' Union. But he could not say specifically, when such direction was given to him. The witness has of course admitted that such instruction was not given to him in writing. He has also admitted, not to be knowing, why he was entrusted with such job. The witness, to a question from the Tribunal, has explained as to what he understood by such instruction. In fact and really, excepting oral testimony, there has been no proof or corroboration of his statements. He has stated to have first visited C.S.D. godown in the middle of March 1978, and saw the workmen working there and there was no labour of the Co-operative. It is not strange that on such visit and without any further evidence, the witness could remember all the workmen and could identify them in their identity/permit cards? He has also admitted not have put his signatures on the photographs affixed to the identity/permit cards, and before 24th February, 1978, he had no idea about C.S.D. godown and he had no connection with any of the workmen, who used to work in the C.S.D. godown and he was only concerned with the output of the work done by them in the godown.

17. It was further admitted by the witness that he was not in a position to say when the identity/permit cards bearing his signatures, were issued and he was also not in a position to say or assign any reason, why they were not issued earlier than 14th July, 1978. It was also the evidence of the witness that Exts. W-1 series were labour permits and not identity cards and he, in his evidence has described them as permit cards and not identity cards and it was his specific and categorical evidence that the names of the workmen and the fathers' names in those cards, were not written in his presence and so also the signatures and L.T.s as affixed in the cards, which were countersigned by him, were not done or affixed in his presence, and that apart, the dates as mentioned in those cards were not also put in his presence. He has also admitted, not to recollect if the signatures of the Labour Union Secretary as put in the cards, were put in his presence and if the persons signing the cards viz. the workmen, were produced before him at the time of signing. Apart from the above, he has stated not to have verified photographs in the permit/identity cards at the time of his counter signature. It was also his specific evidence that the rubber stamps used on the photographs in the cards Ext. W-1 series, having his counter signatures, were not used by F.C.I. for the purpose of identification of the photographs and while identifying them, the Head of the concerned office was to put his signature on the photographs. Such signatures do not definitely appears from the photographs as attached.

18. It was further in evidence of the witness, that FCI issues identity cards to their employees including departmental workers and those cards bear their photographs and they are signed by the appropriate office of the F.C.I. with his own

rubber stamp. Unfortunately, in none of the cards as produced, such signatures and rubber stamps were present. He has also stated that the round type rubber stamp as affixed on his signatures are not used by the F.C.I. and the identity cards are not issued only with rubber stamps. He was also not in a position to say that the round type of rubber stamps appear on the cards counter-signed by him, were given by F.C.I. It was also stated by him, to a question from the Tribunal, that in Ext. W-1 series, the signatures of Deo Prosad Paswan actually appeared, although he testified otherwise and he stated that such signatures have been erased. Such evidence of the witness appeared to me to be self contradictory. It was his further case that the persons on whose behalf and in whose favour, he has deposed, were re-employed by F.C.I. in 1978. It also came out in evidence of the witness that the cards were placed before him for counter signature by Deo Prosad Paswan, but he could not say definitely, if he had seen the signatures of the said Shri Paswan previously and he really counter signed the cards, since no doubt arose in his mind and he did not also, at the time of counter-signing the cards verified, if Deo Prosad Paswan was the Secretary of the concerned Union or if he has worked as Sardar in the Depots other than C.S.D. Depots. He was also not aware if in 1978, a Sardar could work in more than one Depot, and he had no knowledge whether the said Shri Paswan, at all worked as Sardar during the period 1973 to 1975.

19. On the basis of the scanning of evidence of WW-2, his categorical evidence and the submissions made on them by the parties, I feel it difficult to place any reliance on his evidence and hold that the identity/permit cards, sought to be proved by him have not really proved the identity of the workmen concerned or have established that they were really employed at the relevant time in F.C.I. In fact, through this witness neither the Union nor the workmen concerned have been able to prove their case of identity and employment of the witnesses under consideration beyond any reasonable doubt. In fact, apart from the infirmities as above, there are other intrinsic infirmities in evidence in the identity/permit cards with regard to age, address and even in some cases, in respect of the photographs as affixed and as such also, I feel that it will not be safe to return a verdict in favour of the identity or employment of the workmen under consideration at the relevant time.

20. Now let us see how far, the identity/permit cards as issued by Shri J. N. Banerjee, which were sought to be proved by the evidence of WW-4 Harindra Kumar Jana, can be relied on and if and how far, they have been proved. This witness was the Assistant Grade-III in New Jalpaiguri (C.F.D.) Depot of F.C.I. He joined the service in December 1966 as Assistant Grade-II. From 1973 to 1976, he was posted at the aforementioned Depot, and then his designation was Sub-Inspector, Food. In 1978, he was in the same post and in addition to his duties, he was looking after procurement of food.

21. He has said to be knowing the signature of the said Shri Banerjee, since deceased and has claimed that all identity/permit cards, excepting Exts. W-1/158, W-1/161, W-1/163, W-1/165, W-1/169, W-1/178, W-1/196 and W-1/202, were under the signature of the said Shri J. N. Banerjee, since deceased. It was his further evidence that he could not recollect if Parameswar Singh W-1/158 worked in the depot, in 1975, and same was his deposition in respect of Shib Roy (W-1/161). From his evidence it appeared that identity/permit card of W-1/163 or the manner the same was maintained, was something different from the manner they were required to be maintained and he was not in a position to recollect if Suresh Yadav (W-1/165) had worked in the depot, in 1975. He further could not recollect, if Rajgir Mahato (W-1/173) worked in the depot, in 1975. It was his evidence that the photograph of Chandar Sahani Ext. No. W-1/186 was blurred and he could not recollect, if he had worked in the depot, in 1975 and his case was also the same in respect of Sagar Yadav (W-1/196). Apart from the above, his evidence was that identity/permit cards of W-1/201 and W-1/202 were in the handwriting of Sambhunath Pramanik (Das) and Achinta Kumar Sen, Assistant Grade-III under the Depot, Manager F.C.I. Jalpaiguri respectively and he knew their handwritings. There is no evidence that those two witnesses were not available for deposition, yet they were not produced, was also the evidence that the signatures in the permit/identity

cards were not subscribed in his presence and he had no idea when the said Shri J. N. Banerjee, since deceased, subscribed his signature on the cards. It was his further evidence that the contents of identity/permit cards Exts. W-1/201, W-1/202 and W-5/3 were not written in his presence.

22. Thus on the basis of the evidence of WW-4, it is very difficult and practically impossible to place reliance on the case and to come to a conclusion that either their identities were established or they were employed by F.C.I. at the relevant time. Turning now to the cases of the employees other than those and whose identity/permit cards were alleged to be signed by Shri J. N. Banerjee, since deceased, and whose signatures, the said WW-4 knew and identified as such, we shall have to see and find out how far and if at all, their identity/permit cards were proved to have been issued by the said Shri Jana. The witness has just stated to be knowing the signature of the said Shri Banerjee. He has admitted to have got no personal knowledge as to when and to whom the concerned cards, about which he has deposed, were issued and it was also not known to him when the said Shri J. N. Banerjee had put his signatures on the concerned cards. He also could not produce any document to establish that he was appointed as Assistant Grade-III or that he joined the service as Assistant Grade-III or that he joined the service as Assistant Grade-II in 1966. He has stated that there is no order to show that he was designated as Sub-Inspector, Food. His specific and further evidence was that he had no papers to show that the persons named in the identity cards, for which he has deposed and which bore the signature of the said Shri Banerjee, worked in the Dept. in 1975. He has also stated to be knowing all the employees on whose behalf he deposed, to be employed as handling workers. This witness, to my mind was overjealous to sponsor and help the case of the workmen covered by the identity/permit cards, which he has sought to prove. Even on the basis of the evidence of this witness, the employees, whose identity/permit card numbers have been mentioned in paragraphs 2 D and cannot claim the benefits of establishing their identities.

23. As indicated earlier, Shri Sukumar Chakraborty, my predecessor in office, on the basis of the order of the Hon'ble Supreme Court of India dated 17th January 1990, on notice to the parties, took the evidence of 112 workmen and after my joining as the Presiding Officer on 8th April 1991, I have recorded the evidence of witness No. 113 to 163 first then the rest of the employees. Let me first deal with the evidence of those witnesses Nos. 113 to 163.

24. I have already indicated earlier, affidavits in the same line and term were filed by these workmen in support of their identification, residence and employment.

25. Let me first deal with the identity cards which were claimed by the F.C.I. as permit cards and as produced by the workmen. I have also indicated the way and the method by which they were, sought to be proved and the manner of proof. I find that (1) so far WW Nos. 113, 116, 119, 121, 123, 125, 126, 130, 131, 132, 133, 134, 136, 138, 148, 150, 151, 154, 157, 161 and 163, whose corresponding identity/permit card Nos. are Exts. W-1/104, W-1/188, W-1/247, W-1/156, W-1/197, W-1/144, W-1/176, W-1/179, W-1/140, W-1/98, W-1/168, W-1/132, W-1/171, W-1/183, W-1/174, W-1/283, W-1/143, W-1/160, W-1/125, there has been no similarity of the concerned workman with the photographs in the identity card. (2) In respect of WW Nos. 114, 127, 129 and 162, whose corresponding identity/permit card numbers are Exts. W-1/121, W-1/175, W-1/242 and W-1/....., there are little resemblance with the employees concerned and the photograph, as affixed in the cards. (3) In respect of WW Nos. 115, 118, 122, 124, 139, 145, 149, 153, 158 and 159, whose corresponding identity/permit card Nos. are Exts. W-1/141, W-1/80, W-1/157, W-1/184, W-1/233, W-1/201, W-1/120, W-1/146, I find only close resemblance with the employee concerned and the photograph and (4) I also find some resemblance of the WW Nos. 120, 135, 137, 140, 144, 146, 147, 152, 155 and 156 with the photographs in the identity/permit card Nos. W-1/246, W-1/178, W-1/214, W-1/199, W-1/208, W-1/151, W-1/160, W-1/155, W-1/218 and ..... and (5) I find that WW 128 has not produced his identity permit card so I make no comment regarding his case. There is no photograph of WW-169 with his card, so no comment on his account is also required to be made. But one thing is

certain that his evidence was totally false and similar was the cases of WW-141 and 143.

26. Thus, the cases of the employees in group (1) and (5) are not required to be decided on the basis of their identity/permit cards and if at all, the cases of the employees in groups (2), (3) and (4) are required to be decided and considered. In view of my findings earlier, on the evidence of WW-2 and WW-4, I think the consideration of the identity of the employees in group (2), (3) and (5) will not be necessary and material. My observations about the resemblances or otherwise of the employees with their photographs in the identity/permit cards will appear from my findings on the back of the last page of the respective affidavits.

27. To establish their identity and residence, the employees have uniformly produced three sets of evidence viz. (a) Ration cards, (b) Certificates from the officials of Siliguri Municipality and (c) their oral statements about residence. I feel that such evidence as produced, even if they establish the identity and residence of the employees, will not really help them to establish their identity of employment with the said Corporation, which incidentally, is also required to be established on the basis of the determinations of the Hon'ble Supreme Court of India. The identity/permit cards as produced, do not relate to the relevant and material period and the story of the employees that since they were employed in 1975, on that basis, they were employed for few months in 1978, can hardly be believed and really there is no legal evidence to establish such fact. There is really no contemporaneous document to establish that the employees were really employed in 1975 in the said Corporation.

28. The Ration cards which were produced, were xerox copies of the duplicate Ration cards and without containing the signatures of the holders and there were also no signatures of the shop owners at the relevant column at the back of the cards, after drawing of the rations. The entries in respect of drawing of the rations were not uniform, they were haphazard and in some cases there were no entries at all. The cards, which were claimed to be duplicates, were found to be issued in 1990 and there was also very little or scanty evidence about the possession of such cards by the holders earlier than the duplicates as annexed or as stated earlier, there was also practically no evidence of the issue of such duplicate copies in lieu of the earlier cards. The manner in which those cards were issued or the signatures subscribed thereon, cannot also inspire the confidence of the Tribunal and it is strange that in some cases, it appeared that the issuing authorities were the Panchayats or their officials. Apart from the above, the ages as entered in the Ration cards have also not tallied with the ages as indicated in the evidence or as mentioned in the affidavits. In fact, the employees have given their ages only on assumptions and not based on any legal evidence and in any event, the Ration cards of 1990 as produced, do not relate to the relevant and material period. The addresses as given in the cards, in many cases, have not tallied with the residence of the workmen, as disclosed. The relevant cases of the Ration Cards were also not appropriately filled up. Regarding the certificates from the Municipal authorities, which were also filed for the purpose of establishing that the employees were residents of Siliguri, there were practically certificates from Municipal Commissioners of Siliguri Municipality viz., Shri Bejoy Dey, Shri Santi Chakraborty and Shri R. Agarwal, apart from some certificates from Gram Panchayats and other authorities. It would appear from the certificate of Bejoy Dey, that excepting a few, all his certificates were in stereo typed form and actually typed before the issue of those certificate and at the time of typing blank spaces were kept, which were filled in at the time of signing. Severe comments were made on behalf of the said Corporation regarding the character of those certificates, considering the way and manner in which they were issued. I feel, that such comments and criticisms cannot be brushed aside. Shri Dev has issued certificates not only for inhabitants of his Ward, who were perhaps known to him, but he has issued certificates in favour of inhabitants of other Wards and some of his certificates also contained glaring mistakes and defects. Most of the other certificates issued by Shri Chakraborty and other authorities were of course hand written. Whatever be the character of the certificates, they in my view and as indicated earlier, will not help to establish the identity of the employees in respect of their employ-

ment with the said Corporation. Oral statements regarding the residence of the employees were also to a great extent adverse with the addresses of the employees as mentioned in the Identity/permit cards, even if we rely on them. In short, I hold that the evidence of the employees on the above mentioned counts have not established their identity of employment with the said Corporation at the relevant time and beyond any reasonable doubt and such identity, on the basis of residence will be of no use on the basis of directions of the Hon'ble Supreme Court of India. It must also be indicated that all the certificates as produced were of recent origin and many of the employees have frankly admitted that they were secured for the purpose of this case.

29. The employees produced permit slips in the manner as indicated earlier. The character of those slips, for the manner as indicated, appeared to be doubtful. It was claimed by the employees that they were issued by Shri S. B. Paul. The said Shri Paul has tendered his evidence as MW-1. Shri Paul, who has since retired, categorically asserted, on being shown some of his signatures in the permit slips, that they were not signed by him. On comparison of his admitted signature in MW-1 with the signatures in the permit slips as shown, it appeared that they were not signed by him. There was no other contrary evidence available and it was the definite assertion of the said Shri Paul, that he being an Officer of C.F.D. and not G.S.D. at the material time, had nothing to do with those permit slip. It further appeared from evidence that the District Manager had no authority to issue permit slips and the signatures on the permit slips were not his. The slips, with great justification, were claimed to be manufactured documents. The categorical evidence of Shri Paul categorically clinched the issue regarding the authority of the permit slips and that they were not issued under his signature. On a comparison with the admitted signatures of Shri Paul and the way and manner of them, so also on counting the strokes in them, there cannot be any doubt that they have no similarity with his supposed signatures in the permit slips. The issue of the permit slips at the back of the gate passes and more particularly when they were issued by the said Corporation, where there is not dearth of papers or forms, also raises suspicion about their genuineness, and which was with due justification, pointed out by the said Corporation in their submissions. The Commissioners' certificates of course testified that the signatories knew those whom they have certified, for a long time, which expression, to my mind appear to be too vague and indefinite, even though in many cases, the signatures of the certified persons have been attested. The persons who issued the certificates were not examined.

30. Turning now to the payment sheets, I am of the view, on consideration of evidence and the submissions of the parties, that they have not been duly, really and legally proved and as such, no reliance can or should be placed on them. There is hardly any reliable evidence and statement about the payment sheets in the affidavits as filed.

31. All the workmen produced some Union subscription receipts, as stated earlier, not serially but in a haphazard manner and it was their case that they have lost the receipts, which were not produced. Excepting the oral statements, there was no cogent, legal and acceptable evidence about such loss or any proof thereof. In any event, the receipts as produced, not being of the relevant period, will not in my view, ensure to the benefit of the workmen. Apart from the above, there was really no legal evidence or proof that the case of the workmen were duly sponsored by the said Union and in fact, there was no protest lodged duly and legally, after the alleged termination of employments of the workmen concerned, with the said Corporation, by the said Union or the employees.

32. I have, in the above paragraphs 24 to 31 dealt with practically all the common points as enumerating from the oral evidence as recorded in respect of the witness Nos. WW-113 to 163, and I feel that I shall deal with the other evidence of those witnesses, which in my view will be relevant for the purpose of supporting my conclusions.

33. So far as WW-113 (Ext. W-110-4), it would appear that in the certificate of the Municipality issued in 1990, there is no statement that the person certifying knew the employees concerned or that he was an employee of the said

Corporation. There has also been overwriting in the certificate, and the signature of the employee concerned has not been attested. In respect of WW-114 (Ext. W-121) Dutta Babu has not really testified the person and there has been material departure in the evidence and pleadings and L.T.I. as affixed in the Permit Slip, which has not been duly attested. In respect of WW-115 (Ext. W-1141), it would appear that the writings in the Identity/Permit Card differs and the L.T.I. therein is not duly verified, apart from the fact that there are material differences in statements made in the affidavit and evidence. It further appears that the L.T.I. of the employee concerned in the Identity/Permit card has not also been duly attested or certified and there is ample evidence that the photograph as affixed in the said card, has been replaced.

34. The employee WW-117 (Ext. W-1247) has not proved that he was an employee concerned in the order of Reference or he was employed in 1975. His evidence on the question of residence, is also far from being satisfactory, even though he produced Ration Card and the Commissioner's certificate. It is strange that he has not signed the Ration Card, but he has subscribed his signature in the affidavit as filed. So far the Identity/Permit Card concerned, which was issued on 14th April 1978, neither Dutta Babu nor Shri Jana has made any statement. The name of the father in the said Card differs. In fact, on the basis of the submissions, it is doubtful whether he stayed at Siliguri at the relevant time. His alleged permit slip will not also prove or establish his employment with the said Corporation at the relevant time. There has really been no evidence that he was employed either in 1975 or 1978. The employee WW-118 (Ext. W-160) has really made contradictory statements in the affidavit and evidence. There has in fact been no statement that he worked in 1978. Neither the Ration Card nor the Commissioner's certificate will prove his residence at Siliguri earlier. Really, there is no evidence about his proper residence from 1972 to 1979. The condition of the Identity/Permit Card will have to be looked into and considered and on such or proper consideration, no reliance can be placed on the same, the more so when, the L.T.I. has not been countersigned by any officer of the said Corporation. In respect of WW-119 (Ext. W-1156), there are discrepancies in affidavit and evidence and there has been no evidence of his employment with the said Corporation in 1972 or his stay at Siliguri since 1972. The Identity/Permit Card is not beyond suspicion, looking at its condition and when below the photograph, there appears another mark. So far this employee is concerned, there is no evidence of his working in the said Corporation in 1973 to 1977 or 1978 and he has not proved his termination in 1975.

35. The employee WW-120 (Ext. W-1240) has made no statement of work or his employment in the said Corporation in 1978 in his affidavit, but he has tried to establish such case in his evidence. The employee WW-121 (Ext. W-1197) has made contradictory statements in the affidavit and the statements as made before this Tribunal and on a reference to the Identity/Permit Card, it appears that before the name of his father the word "Late" has not been mentioned. The condition of the said card also raises suspicion. The employee WW-122 (Ext. W-1157) has made contradictory and inconsistent statements regarding his permit slip in his evidence and affidavit and on a reference to the Identity/Permit Card, it would not only appear that there has been evidence of pasting, but it would also appear that different ink has been used. The employee WW-123 (Ext. W-1144) has made inconsistent and different statements in his evidence and affidavit. His Identity/Permit Card bears no address and the writings therein are not worthy of consideration and the same cannot be relied upon. There has been no evidence that any protest was raised by the employee on termination of service and in fact, he could not produce any evidence of such termination. The employee WW-124 (Ext. W-1184) has for the first time spoken of Ramabtar as Sardar in his evidence and the employee WW-125 (Ext. W-1176) has sought to make out different and new case in his evidence than what he has stated in affidavit. The employee WW-126 (Ext. W-1179) has made such statement in his examination in chief which has not been mentioned in the affidavit, as filed. He has also not been able to establish that Ramabtar was his Sardar. He in fact, made the case regarding Ramabtar

before this Tribunal only. His identity/permit card is worth to be mentioned, because the address, his signature and writing in that card are on a different ink. The said card has not also supported that he was employed in 1975. He has not spoken about his termination in 1975, or regarding his residence and whereabouts. The evidence and affidavit of employee WW-127 (Ext. W-1175) are inconsistent. The writing of the address in his identity/permit card are different and there has in fact been no evidence that the gentleman who has been named as his father, was really was his father and in the Commissioner's certificate as produced, there were not only evidence of over writings but there are evidence of erasing. On consideration of the case of WW-128 (Ext. W-1140) in respect of Ext. W-52 cannot be accepted or relied upon, as the same is on a Post Card without any date. In the identity/permit card of WW-129 (Ext. W-1242) there has been evidence of overwritings and it is not strange that the Ration card in his case was issued by the Panchayet, who incidentally, is not the authority to issue such card. That apart, there is neither any date nor any date of drawing mentioned in that card. The name of the father of WW-130 (Ext. W-1140) not only shows mark of over-writings but in fact there is no address. The affidavit and evidence of WW-131 (Ext. W-1198) differs in material particulars and in his identity/permit card, there has been no mention of his name. That apart, against his father the word 'Late' has not been mentioned. The condition of the said card will have to be looked into and considered. Not only the L.T.I., but also the date as given in the said card, are blurred. The evidence and affidavit of WW-132 (Ext. W-1168) differed in material particulars and this employee has not produced his Ration Card. It is strange that his identity/permit card everything is blurred, excepting his L.T.I. and the date. There is positive evidence that the photograph in the said card has been pasted later and over the outlined mark of another photograph.

36. In respect of WW-113 (Ext. W-1132), it will appear that his evidence was discrepant than his affidavit and in his Ration Card, Santinagar residence is not mentioned. There is also no evidence of spousing his case by the said union and so also, there is no evidence of termination of his service in 1975. The paper of the identity/permit card is old, but the writings thereon appeared to be of recent origin. The evidence and the affidavit of WW-134 (Ext. W-1171) appeared to be inconsistent, the colour of the photograph in the said card is discoloured, the number 49 as written, the L.T.I. appears to be old, but the colour of them have not been changed. The evidence and the affidavit of WW-135 (Ext. W-1178) appeared to be different. The only evidence of his work with the said Corporation was his identity/permit card, but the address mentioned therein differed with his address in the affidavit. The address of WW-136 (Ext. W-1183) differs from his address in the affidavit, the writings therein have faded, but not the L.T.I. and on the photograph as appearing, there appears to be watermarks. The Permit slip was of G.F.D. but Paul Babu, on whose signature thereon much was said, was of C.F.D.

37. In the Identity/Permit card of WW-137 (Ext. W-1214) there appeared to be over-writings and the address differed from the address in the affidavit and the statements as made therein also differed from the deposition. Apart from the fact that different inks have been used therein. His identity slip Ext. W-113 was torn and in a tattered condition and pasted on a piece of paper. No reliance can thus be placed on the same although his identity to some extent resembled with the photograph as affixed. The employee WW-13 (Ext. W-1174) has not made out any case about Permit Slip in his deposition and there has been overwritings in his Identity/Permit card, at least in respect of the L.T.I. and the date. Apart from the fact that there is evidence of fading. It is strange that the Identity/Permit card of WW-139 (Ext. W-1233) has faded to a great extent, but not his signature, date and photograph. From the Ration card, it did not appear that the sister of this employee was the Head of the family, although his statement was otherwise. The Identity/Permit card of WW-140 (Ext. W-1199), even though was issued about 12 years back yet writings thereon appeared to be fresh and the signature was of recent origin. This witness has signed as Dipak Lal Dutta in the affidavit but in his card, the name has been mentioned as Dipak Dutt. I do not find that such difference is very material as submitted on behalf of the said Corporation. The certificate of Sishu Kendra

as issued in favour of the employee, was dated 1st November 1970, so the same has no reliance in this case and that will not prove his case of residence at Siliguri at the relevant period. There has also been no evidence of the said Union to espouse his cause and there is also no evidence of his working in 1971 to 1975 or his working in 1978. The name and the father's name of WW-141 (Ext. W-1/153) differed from his Identity/Permit card and there has been no explanation of such difference. The L.T.I. on the card has not been identified. The employee has also sought to make out a new case regarding his employment under a Sardar.

38. The employee WW-142 (Ext. W-1/254) has subscribed his signature in two different manner, on which severe criticism was made on behalf of the said Corporation. The writings in his Identity/Permit card have faded and his signature thereon appeared to be of recent origin. That apart, his address in the said card and affidavit appeared to be different. Apart from his Ration card, the witness produced at the time of his deposition, two other Ration cards of his family. I feel that no reliance can be placed on those two cards, as (1) they were not initially mentioned in his affidavit and (2) the statements subsequently made in respect of those cards in the affidavit, have been incorporated after the affidavit was notarised before the Notary. From a reference to the affidavit, it will appear that the concerned writings are over the seal of the Notary. If they were incorporated earlier, they should have been under the said seal. No convincing evidence has been lead to explain the position, even though, the same was asked. The name of WW-143 (Ext. W-1/169) differs from his Identity/Permit card, so also his father's name and address. The photograph and the writings in the Identity/Permit card as said to be issued to WW-144 (Ext. W-1/208), appeared to be of recent origin and the address mentioned therein, is different from the address shown in the affidavit. There is also evidence of fading in the said card. The signature of the employee in his affidavit was also different. Shri Paul was an Officer of C.F.D. and not of G.F.D., but the said slip in this case was of G.F.D. and so also the certificate, which was produced and which was not also of the relevant period. There has also been no legal evidence to establish the allegation that the employee was engaged in 1971 under a Contractor, apart from the fact that the said Union espoused his cause or that he was terminated in 1975 and there has also been no evidence that he worked in 1971 to 1975 and 1978. So far WW-145 (Ext. W-1/201) more or less similar submissions as mentioned above were made.

39. In respect of WW-146 (Ext. W-1/151) it would appear that the photograph and the writings in the Identity/Permit card were blurred and it would further appear that the subscription receipts which were produced were not of the relevant period and there was no evidence of espousal of this cause by the said Union. That apart, there is no evidence of the employee working in his affidavit and there has also been no evidence of termination of his service in 1975. In the Identity/Permit card of WW-147 (Ext. W-1/160), there was water marks and the subscription receipts as produced, were not of the relevant period. There has also been no evidence that the employee worked in the said Corporation from 1968 to 1978 and in fact, there was no such statement in the affidavit. There was also no evidence of espousal of the cause by the said Union or the employer was terminated in 1975. Severe comments were made regarding the spelling of the name of WW-148 (Ext. W-1/223). In fact, it was pointed out that the signature of the employee differed. The paper of the Identity/Permit card was torn and there was a blurred stamp in the same, for which the said card appeared to be of suspicious origin. There was also no evidence of espousal of the cause by the said Union or any evidence that in 1975 and 1978, the employee was employed and his service was terminated in 1975. The subscription receipt as produced was not of the relevant period. There is also no evidence of employment of WW-149 (Ext. W-1/120) in 1972 to 1975 and the Identity/Permit card which was issued in 1978 i.e. a long time ago, appeared to be practically fresh.

40. The Commissioner's certificate which was issued in favour of WW-150 (Ext. W-1/143) in 1991, bore no address and even though the Identity/Permit card or photograph

therein, appeared to be damaged, yet the writings or date and name in the same were fresh. The subscription receipts in this case were also not of the relevant period and there was neither any evidence of espousal of the cause by the said Union or there has been any evidence either in the affidavit or otherwise that the said employee was terminated in 1975 or 1978. The address of WW-151 (Ext. W-1/166) in the Identity/Permit card differed with the address given by the employee and there has neither been any evidence of espousal of the cause by the said Union or any evidence of employment of the employee in his affidavit. There has also been no evidence of termination of his service in 1975 or that he worked in 1978. It would appear that the name of WW-152 (Ext. W-1/155) was mentioned as Chottan alias Chittan for the first time before this Tribunal and earlier there was no such evidence given elsewhere and in the Identity/Permit card, the name has been shown as Chittan. It was claimed that only to cover up the name Chittan in the Identity/Permit card, such action was taken and in the affidavit the employee has also mentioned the name as Chottan. His address in the Identity/Permit card also differed and it was appropriately said to be contrary. It appeared that the photograph in the said card was a replaced one and strangely enough before the name of his father, who was admittedly dead, the word "Late" has not been mentioned in the card. The subscription receipt as produced were not of the relevant period and there has been no evidence of espousal of the cause by the said Union. Apart from the fact, that there was no evidence of termination of his service. It would appear that everything in the Identity/Permit card of WW-153 (Ext. W-1/146) is blurred and that apart, the father's name of the employee in the Identity/Permit card and the Ration card as produced differed. In fact, in the affidavit, his father's name was mentioned as Sukdeb, while in the Ration card he was shown as Sukdeo. The subscription receipts as produced were not of the relevant period and there was no evidence of espousal of the cause by the said Union and that apart, there has been no evidence of work or termination of the employee concerned.

41. The Identity/Permit card of WW-154 (Ext. W-1/125), which was an old one, was issued in 1978, appeared to be very fresh and it was contended that the same was prepared subsequently. It would also appear that after the entry in the back side of the Ration card on 10-11-1990, drawings of 2nd June, i.e. of subsequent date has been entered. So far subscription receipts as produced, one was of the relevant period and not the others and there is no evidence of espousal of the cause by the said Union or any evidence of work in 1978 and there has also been no evidence of termination 1975. The Permit slip of WW-155 (Ext. W-1/218), when produced was objected to, but thereafter, the said Union has not taken any steps to cure the defect. The photograph in the Identity/Permit card was blurred. There was water marks, but strangely enough, the writings therein appeared to be not at all damaged. It also appeared that the back side of the Ration Card as produced, was absolutely blank and the subscription receipts were not of the relevant period. There was no evidence of espousal of his cause by the said Union and it would appear that he was not in service at the relevant time and there is no evidence that his service was terminated in the year 1975.

42. In the name and father's name on the Identity/Permit card of WW-157 (Ext. W-1/117), there has been over writings not only in the name but also in the name of the father of the employee and the photograph as affixed, is absolutely damaged. The Identity/Permit card of WW-158 (Ext. W-1/147) was indicated to be a manufactured one, as the same was issued in 1978, but the writings therein appeared to be absolutely fresh and of recent origin. It was pointed out that the L.T.I. in the Identity/Permit card of WW-159 (Ext. W-1/80) has faded, but not the name of the employee and that of his father. In the Identity/Permit card of WW-160 (Ext. W-1/163), there has been no photograph affixed with the Identity/Permit card and only a photograph has been affixed with the certificate issued by one Dharendra Kumar Banerjee, Ex-District Incharge of the N.J.P., G.F.D. ECI and strangely enough, the employee has signed the affidavit but in the Identity/Permit card, he has subscribed his L.T.I. The certificate in the instant case as indicated was not issued by the Municipal Commissioner and it is strange



that the xerox copy of the Ration card showed the signature of one S. Chakraborty, who admittedly was not an officer of the Rationing Department. The authority of the certifying authority Shri Banerjee was disputed and it was pointed out that after his retirement, he issued the certificate on a plain sheet and not on the letter head or pad of the said Corporation. To my mind, the evidence of this witness appeared to be false. So far WW-161 (Ext. W-1/20) that he has affirmed his affidavit as Chandradeo Thakur alias Azad and it was pointed out that such alias was incorporated, so that his name fits in with the Railways Certificate dated 22nd May 1989, which was not for the relevant period and valid for one year only from the date of issue and which testified the holder of the certificate as a physically handicapped person. In his Ration card and Identity/Permit card, this witness was not been described as Azad and in his Identity/Permit card, his name has also been mentioned as "Chandradeb" and not "Chandradeo". There has also been no evidence that he was handicapped from his infancy or otherwise. The back side of the Ration card was absolutely blank and there has been no proof of his termination in 1975. There was not also any evidence of his approach to the said Union about the espousal of his case and regarding his residence Permit slip and payment sheet, same submissions as indicated earlier, to my mind were duly made. He had no resemblance of identity with the photograph. Regarding the age, residence, Permit slip and payment sheet of WW-162 (Ext. W-1/190), the submissions as indicated earlier were repeated and it was duly pointed out that his address in the Identity/Permit card and affidavit difference, so also the name of his father. In his affidavit, the witness has stated that he lost his father when he was young, but in his Identity/Permit card which was in 1978, his father has not been mentioned as "Late". The witness has produced a family Ration Card with the same defect as indicated earlier, but no such statement about the family ration card has been made in his affidavit. The back of the Ration card was not at all legible and there was a certificate of his residence from anyone like others. Regarding the Payment sheet, Union subscription receipt, Permit slip and his employment and termination, so also the union receipts, same submissions as above, were duly made. It should of course be noted, one of the receipts was of the relevant period and not the others. There was little resemblance of this witness with his photograph in his Identity/Permit card. In the Identity/Permit card of WW-162 (Ext. W-1/189), excepting a mark, there is no photograph attested. He has of course stated that the said card was damaged, but has not indicated the reasons how and when such damage happened and in that card, there is only the mention of "Sahani" and not his name in eligible manner. That apart, his address in the affidavit and Identity/Permit card differed. The Ration card bore the same defects like others as pointed out and the back side of the card was not absolutely blank but the same was with haphazard entries. From my notings on the back of the respective affidavits, it will appear whether the identity of the employees resemble with their photographs or whether there is no resemblance, some resemblance or little resemblance. The certificate in this case was issued by one Dharendra Kumar Banerjee on 22nd January 1991 and regarding and validity and authority of the same similar submissions as in the case of WW-160 (Ext. W-1/163) were duly made. He has not mentioned about his membership for the relevant period. On the points some submissions were made.

43. It would be better, if now I indicated the categorical submissions of Shri Anil Das Chowdhury leading Shri Manash Sinha. The submissions as will be recorded now were his general submissions in respect of all the sets/groups of the employees. He contended amongst others that as the workmen were admittedly illiterate, any omission or mistake made by them, in respect of the description of their age, residential address and other statements made in their evidence, which were contrary to their affidavit, should be over-looked. They should not be strictly construed and they being belonging to the weaker section and out of employment for a long time, should be shown some favourable and lenient consideration. It is true that most of the workmen claimed to be illiterate and they admittedly belong to weaker section but that in any view cannot be construed or considered in the light as suggested by Shri Das Chowdhury, if they have not really succeeded

in establishing their cases or prove them in accordance with law and beyond any reasonable doubt.

44. Shri Das Chowdhury also submitted that the employees in this case were admittedly dismissed with effect from July 21, 1975 and this Tribunal, should decide as to what should be its approach to this case, so that a final decision is arrived at, keeping in view, the determinations of the Hon'ble Supreme Court of India, in terms of the decision in the case of Workmen of Food Corporation of India Vs. Food Corporation of India, 1985 (2) LLJ 4. As stated earlier, from the determination of Shri R. Bhattacharjee Presiding Officer of this Tribunal and whereby he had refused to entertain the Reference, the said union went to the Hon'ble Supreme Court of India and in that case, the determination referred to hereinbefore was made. The particulars of the portion of the Judgment to which reference was made by Shri Das Chowdhury would be mentioned hereinafter for necessary consideration.

45. While on his submissions about the approach to be made by this Tribunal, it was firstly submitted by Shri Das Chowdhury that it was not the duty of the employees to establish that their services were terminated, since the words in the order of Reference was "Whether the discontinuance of ..... was justified" which was enough to establish that they were in employment. It was really submitted by him that the use of the word "discontinuance" would automatically establish and mean that 464 employees involved in the Reference were mutually engaged and thereafter, their services were not continued. It was submitted by him that even though there were and are admitted latches and lacuna of the employees to prove their cases or failure on their part, to lead appropriate evidence on that account, the said Corporation cannot take advantage of the same or act as a watch dog to find out the fault, lacuna and latches. In fact, it was specifically submitted that lacuna or latches to prove the case of the employees, if any, cannot or should not be allowed to be taken advantage of by the said Corporation and apart from that, they should not be allowed to find out such lacuna only, for establishing their case and if the same is allowed, there would be grave miscarriage of justice in a case of the present nature. It was indicated by Shri Das Chowdhury that thus, this Tribunal should try to find out if the employees concerned had the relevant documents and whether those documents have not been produced. It was also his case that on the basis of the evidence as lead by the employees, the relevant documents were admittedly in the possession of the said Corporation and if they have failed and neglected to produce them, then adverse inference against them should be drawn and for such inference, the determination should go to the benefit of the employees. It was secondly submitted by Shri Das Chowdhury that admittedly, the employees concerned in this case were and are illiterate, poor and were passing their time through difficult period and strains, for their non-employment and as such, it will be difficult to expect from them that they will be in a position to produce all the relevant documents at such a distant date of hearing, when admittedly they were terminated in 1975. It was thus submitted by him that therefore, this Tribunal should accept the documents as proved and produced, as good pieces of corroborative evidence, more particularly when, it was highly improbable that the employees should approach the Tribunal, only for fun or for pleasure. According to Mr. Das Chowdhury that too on the basis of the decision of the Hon'ble Supreme Court of India, the Tribunal while deciding the issue, should take a realistic approach and pragmatic view. In support of such submissions, reference was first made to the case of Workmen of Messrs Williamson Magor and Company Ltd. Vs. Messrs Williamson Magor and Company Ltd., 1982 (1) LLJ 33, where it has been observed while dealing with the duties of Industrial Court that it is the duty to make an Award and they are intended to adjudicate Industrial Dispute between the management and their workmen, settle them and pass effective Award in such a way, that Industrial peace between the employer and the employees may be maintained, so that there can be more production to benefit all concerned. For the above purpose, the Industrial Tribunal as far as practicable, should not be constrained by the formal Rules of Law and avoid inability to arrive at an effective admittedly belong to weaker section, but that in any view,

Award to meet justice in a particular dispute. In that case, a reference was made by the Court in the case of Karam Chand Thappa Employees Association, Madras Vs. Management of Karam Chand Thappa Ltd. Madras, AIR (1978) S.C. 474 and were at page 475, it has been indicated that "In Industrial Law, interpreted and applied in the perspective of Part-IV of the Constitution, the benefit of reasonable doubt of law or facts, if there be such acupt, must go to the weaker section, Labour". The Tribunal will dispose of the case taking this compassionate approach, but without over-stepping the proved facts. Thereafter, and secondly, reference was made to the case of Gujarat Steel Tubes Limited etc. Vs. Gujrat Steel Tube Mazdoor Shabha and Others, 1980 (40) F.L.R. 152, where amongst others, a point arose whether an Arbitrator under Section 10-A of the Industrial Disputes Act, 1947, is amenable to jurisdiction of High Court and what should be the power of interference or howtar the High Court can interfere under Article 226 and 227 of the Constitution of India with the Award of an Arbitrator, made under Section 10(A) as mentioned above and the majority view as expressed, was to the effect that "the amended Article 226 would enable the High Court to interfere with an Award of the Arbitrator. if that is based on a complete misconception of law and is based on no evidence or that no reasonable man would come to the conclusion to which the Arbitrator has arrived. It has also been observed, under Articles 133 and 134 in the Appellate Jurisdiction, an appellate Court may interfere not when the order appealed against is not right, but only when it is clearly wrong, such difference as indicated to be real, though fine". On the basis of the above observations Shri Das Chowdhury submitted that the Tribunal is further to examine and consider the basic economic fact, meaning thereby, the helpless condition of the employees concerned and in case of any doubt, the test should be, as mentioned in 1982 (1) LLJ 35.

46. He also pointed out that there can not be any dispute in this case that in the said Corporation, initially contractor's system was prevalent and thereafter, direct payment system was introduced and then in 1975, the 464 employees mentioned in the Reference were terminated, further and other particulars on this point as argued, will be indicated hereafter, while on merits, Shri Das Chowdhury indicated that the fact that the workmen were really employed and thereafter, their services were discontinued, was not in doubt, which will also appear from the written statement and prayers of the said Corporation. As mentioned earlier, because of the term "discontinuance" as mentioned in the order of Reference and also appearing in the written statement, there cannot be any doubt that the concerned employees were initially in employment under the said Corporation and there should not be any doubt or dispute on the basis of the pleadings and records, that they were in employment in or about 1975. It was also submitted by Shri Das Chowdhury, on the basis of the observations in 1985 (2) LLJ 4 that if the workmen have been able to establish that they were and are concerned in the Reference, then they must get the benefits as prayed for, even on the basis of the evidence, however meagre and scanty, they may be.

47. It was submitted by him that admittedly there was a strike in the said Corporation, which perhaps continued upto March 17, 1975 and as such, the permit slips as produced, were issued, so that on and from March 18, 1975, the work in the said Corporation could start. To establish the bonafides of such statement or statements regarding the permit slips, reference was made by him to the recorded evidence of WW-113 and WW-121. He pointed out that WW-113 has really established and proved the circumstances in which, to end the strike or for ending the dead-lock as created, the permit slips were issued and the witnesses as mentioned above, according to him, have said about the list of persons, who worked in or upto 1975. He also referred to the evidence of Deo Prasad Paswan recorded on December 12, 1989, as to the issue of such slips or the circumstances why they were issued and contended that the evidence of WW-1 Shri S. B. Prasad Paswan recorded on December 12, 1989, as to the not disproved such submissions as recorded earlier. It was further pointed out by him that WW-1 Shri Deo Prasad Paswan and WW-2 Shri Subir Dutta and WW-4 Shri Jana also testified the above facts and the circumstances about

the question of re-employment of 464 employees as mentioned in the order of Reference.

48. As indicated earlier, it has been submitted by Shri Das Chowdhury that the issue of permit slips were necessitated because of the strike which happened after June 1975. But unfortunately, there is no such evidence available in this proceedings. He indicated further that on and from January 3, 1973, employees were paid by four of the representatives chosen by the said Corporation and thereafter, on and from January 1, 1974 to January 27, 1975, they were paid through the officers of the said Corporation. Those statements were made by him to establish that before the termination, the employees were really under direct payment system of the said Corporation. He further stated that the fact of the aforesaid payment by the officers of the said Corporation will appear from Ext. M-5, which was dated January 7, 1974 and also from Annexure-E to the written statement. That document was dated April 11, 1975 and according to him, that will establish that wages to the employees for March 1975 were due and as such, the said Union claimed for the payment thereof.

49. It was then pointed by Shri Das Chowdhury that the evidence of the employees will show that the payment sheets were with the said Corporation and since such fact was an admitted one, it will appear from the order sheet dated February 28, 1979 and also from the order sheet of April 9, 1979, there were orders passed by the then Tribunal to produce those records. It was further pointed out by him that on June 15, 1979, during the course of his cross-examination, Shri Paul stated that he had brought for production some records and not the records in their entirety, because of the volume and he was ready to produce those records, which were brought by him and thought to be relevant. It was also pointed out by Shri Paul that there is no specification of the exact records or their relevant particulars and as such, it was really difficult for the said Corporation to produce those voluminous records. Shri Das Chowdhury then pointed out that even though the employees have not been able to produce all the permit slips, but as permit slips as produced were with numerical and serial numbers, so there can not be any doubt that such slips were issued by the said Corporation or their officers. To establish that the slips as produced were duly numbered in the manner as indicated, reference was made by him to the affidavit and evidence of WWs-114 and 115. In short, his submissions were that when admittedly all the permit slips were not produced, but since the permit slips bore numbers as mentioned above, so in view of such admitted evidence as mentioned, the existence of the permit slips should be presumed and believed and as the said Corporation has not produced any contrary evidence to contradict that part of the evidence as mentioned, even though they were directed, the presumption as stated earlier should be against them and in favour of the employees. It was also maintained by Shri Das Chowdhury that payments as claimed to have been made through the four representatives of the employees, were also admitted by Shri Paul, MW-1, in his earlier deposition on 22nd March 1979.

50. On the question of identification, Shri Das Chowdhury repeated that according to him, the general tests will be that when the workmen themselves have appeared, given out the names and the numbers as claimed, tallied with the list of 464 employees and the said Corporation has not produced any workman bearing the same name or they had tried to disprove the case of the employees after taking out summons and really have not disputed the issue regarding the identity, so also the presumption should be in favour of the employees and not the said Corporation, the more so when the workmen boldly faced cross-examination on the point of identity and that according to Shri Das Chowdhury has clinched the issue. Such clinching of the issue according to Shri Das Chowdhury was furthermore established by the fact that the workmen concerned had really worked for the said Corporation and their services were terminated in 1975. Apart from the above Shri Das Chowdhury stated that his position would have been different, if any other co-worker had come and deposed otherwise. It was Shri Das Chowdhury's further contention that when workers of said Corporation have stated that they knew each other and the other co-workers, there was no need



of producing other employees, as that was the best evidence which could be and was produced.

51. Shri Das Chowdhury then pointed out that to establish the identity, the workmen, as indicated earlier, have produced other types of supporting/corroborating evidence viz. (i) Kation cards, (ii) Certificates from Commissioners of the Municipality and other authorities, (iii) Permit slips and (iv) Identity cards. While on the Ration Cards Shri Das Chowdhury frankly indicated that they will, on production prove the name and address of the holders only and the Commissioner's certificate according to him, will establish that the Commissioners or persons certifying, knew the persons certified for a long time. He pointed out that the Identity cards were really proved through the evidence of WWs-1, 2 and 4. While on this point of Identity Card, Shri Das Chowdhury first referred to the evidence of WW-1, who was admittedly a Sardar and has produced Identity cards as mentioned earlier and claimed that he knew the holders of these identity cards, as they had worked with him and apart from that, he has said that as sardar and also as the Secretary of the said Union, he knew every one of the employees. There was no evidence as to how many employees were employed under a sardar, so that part of the evidence of WW-1 that as sardar he knew all the employees, is difficult to be believed and such fact has not really been established. Shri Das Chowdhury, in addition to his submissions as above, pointed out that from the conduct of the said Corporation or their authorities, it would appear that they considered WW-1 to be an important person and as such, they directed WW-2 to sign as the identity cards that would be produced before him for signature by WW-1. It was also pointed out by him that WW-2 has practically admitted to have signed at least 50% of the identity cards as produced before him for signature and he has not said that these cards were not issued by the said Corporation or they were not signed by WW-1 and signatures on those cards, or LTIs as affixed were not made or given before WW-1. In fact, it was suggested by Shri Das Chowdhury that WW-1, as mentioned earlier, was a very important person, admittedly made by the said Corporation and they made the position of WW-2 very insignificant. His role, was according to Shri Das Chowdhury, made so insignificant by the said Corporation that he was asked, only to sign the cards which will be produced for his signature by WW-1 and by this, according to Shri Das Chowdhury, not only the authority of WW-1 was established, but such act or action on the part of the said Corporation, gave purported flavour and character of official stamp to the identity cards and as such, they should be deemed to be and considered as official document.

52. I have indicated earlier the basic factors/general tests which according to Shri Das Chowdhury should be followed in a case of the present nature. Even though I have indicated some of my views on the cases earlier, but I think, now I should restate the salient factors, on which replies were given by Shri Das Chowdhury on the above-mentioned factors and tests and my answers to them. While on the question of non production of the appropriate papers by the workmen concerned, he referred to the evidence of WW-4 recorded on April 10, 1991 and more particularly to the portion where in cross-examination by the Food Corporation of India he has said "I have not brought the documents to show my appointment as Assistant Grade-III. I have not brought the papers to show that I have joined the service as Assistant II in 1966. I was appointed on December 12, 1966". For the purpose of establishing that the witness had the occasion to know that the system of payment prevalent in Food Corporation of India and so also the employees, whom he had identified, reference was also made to his evidence and categorical statement to the effect that he knew the workmen concerned as they worked in the Depot in 1975. This witness has pointed out in his examination that during his service, there were papers in the depot to show the direct payment of wages to the handling workers and it was also stated that such papers may be available in the said Depot, which is under the charge of the Assistant Manager. He has also stated that he knew the signature of Food Corporation of India official J. N. Banerjee, who has since died. The evidence of this witness coupled with the evidence of WW-1, Das Prasad Paswan, was stated by Shri Das Chowdhury, has conclusively proved that the

employees as involved in this proceeding, were known to WW-1 and WW-4 and they have really worked in 1975. It was also indicated by him that the said WW-1, has also established or shown appropriate evidence in support of the case of the employees concerned that the Identity/Permit cards were prepared by Food Corporation of India and to establish that, he also referred to the cross-examination of WW-4, wherein he has named two officials of Food Corporation of India, who signed Exts. W-1|201 and W-1|202, and apart from the above, it was pointed out that it was indicated by the witness that he also knew the signature of J. N. Banerjee. Such submissions of Shri Das Chowdhury as mentioned above, in my view, cannot be relied upon, as apart from those mere oral statements, there were no other positive and corroborative evidence.

53. In reply to the dispute raised in respect of WW-160 (W-1|163) that is Lachmi Rai, which showed that the signature of J. N. Banerjee could not be read, Shri Das Chowdhury submitted that since the name of Lachmi Rai was appearing in the Identity/Permit card and there was some sort of counter signature, which was of Shri J. N. Banerjee (since deceased), the same should be accepted. He could not ofcourse deny that the signature of J. N. Banerjee was not at all legible. So, no reliance, in my view, can be placed on such submissions. In respect of WW-163 (W-1|89), regarding whose identity, a dispute was raised in the manner as indicated hereinbefore, Shri Das Chowdhury pointed out that since on the card the title of the employee is shown, without his name or even the same was not legible, reliance should be placed on that card, since the father's name of the employee agreed and WW-1 has stated to be knowing him. Such explanation in my view can not be accepted.

54. While on the variations or otherwise of the Identity/Permit cards, since there were, in many cases, disputes regarding the address, Shri Das Chowdhury referred to a specimen copy of the card and stated that there was no space for recording the address and he further pointed out even though, in many cases addresses have tallied and have not tallied in plenty number of cases, they cannot be overlooked. It was further pointed out that since addresses in the concerned Identity/Permit cards were mentioned below the father's name, so the addresses of the employees as recorded, should be taken to have mentioned either with reference to their village address or birth place and as such, they may not tally with the present address of the employees. To establish his submission, reference was made to the evidence of WW-145 and also the Identity/Permit card numbers W-1|104 and W-1|188.

55. As pointed out earlier, exceptions were taken in many cases regarding the condition and manner of preparation or filling up of the Identity/Permit cards. First of all, Shri Das Chowdhury took the Identity/Permit card of WW-118 (Ext. W-1|60) and submitted that his Identity was really and duly proved by WWs 1 and 2. It would appear that the evidence of WW-118 was that his Identity card was spoiled by tearing off a portion of the slip pasted on the same by his young son, but on a reference to the photograph as affixed in that card, it would appear that the same has really been passed on the pitch-board, wherefrom, perhaps the inner paper was torn. If the photograph was initially passed, the same was expected to be on the paper, pasted on the pitch-board and it was also expected that when the said paper on the same has been torn, the photograph affixed on the same would not be in the same position, as it is now. Thus, I felt that even inspite of the evidence of WWs 1 and 2, it is difficult to accept that identity of this employee has duly been established. A point was taken in respect of the identity/permit card Nos. W-1|125, W-1|132, W-1|144 and W-1|199, as the cards appeared to be of fresh origin. On a reference to those cards, nobody can deny such fact and it cannot also be denied that when the identity/permit cards, if at all, were issued in 1980, so the cards could not be so fresh as they are now. Thus, the submissions of Shri Das Chowdhury that these cards should not be disbelieved, since the witnesses concerned have testified them, cannot be accepted. Regarding Identity/Permit Card Nos. W-1|188, W-1|179 and W-1|137 it would appear that there are marks of identity cards earlier photographs and after taking out the original photographs, new photographs have been affixed and the contrary contentions on

such point, as raised by Shri Das Chowdhury cannot be accepted. Regarding the employee W-128, on a reference to the recorded evidence, Shri Das Chowdhury submitted that since he had lost his identity card, so an identity slip W-5/2 was issued. This part of the submission of Shri Das Chowdhury/cannot also be accepted since there has been no appropriate legal evidence to establish the same and the said Ext. W-5/2 appeared to be pasted on a Post Card. The said exhibit No. W-5/2 is pasted on a post card and no reasonable or possible explanation was available. It was indicated by Shri Das Chowdhury that WW-1 has proved the identity card of WW-128, which was signed by D. Samiyar. It was also pointed out by him that the said WW-1 took all the identity/permit cards and proved them, so there can not be any doubt or dispute about the genuineness of these cards and they can safely be relied upon, because of the admitted position, the said WW-1 was holding or such position, which was assigned to him by the said Corporation, the particulars whereof have been indicated earlier.

56. While on the validity or otherwise of the Ration cards and for the reasons as indicated hereinbefore, Shri Das Chowdhury pointed out that since all the cards contained numbers, folio numbers, name of the holders, their father's name, so also the shop numbers, there should not be any doubt about their genuineness or authenticity. He of course, very frankly admitted that most of the cards or practically all the cards, excepting the Ration card of WW-129 Nisit Bose, did not contain either the signatures or the L.T.I. of the holders at the required serial, but that according to him, should not be considered as valid objections taken by the said Corporation, since nobody asked the holders either to put their signatures or L.T.I.s. In fact, there has been no legal evidence on the basis of such submissions of Shri Das Chowdhury or that Shri Bose was asked to sign and that is why, he has signed his card. Shri Das Chowdhury explained that since Shri Bose could sign, he has put his signature.

57. A point arose on the admitted fact that the Ration Cards bore no signatures, by the ration-shop owners and Shri Das Chowdhury pointed out that such irregularities should be overlooked, as even in the Ration cards of Calcutta, there are no such signatures by the Ration-shop owners, although there was no legal evidence in support of his submissions, yet he produced the family ration cards of his junior Shri Sinha, for establishing such submissions. Be that as it may, even if the defects as indicated are overlooked for other defects as mentioned earlier or such defects which will be indicated hereinafter, the Ration cards, in my view, cannot be taken as evidence of establishing the identity of the employees, more particularly, their identities in respect of their employment under the said Corporation. While answering the irregular entries in may of the Ration cards drawing of rations on the basis of them, Shri Das Chowdhury pointed out that it is true that in most of the Ration cards as produced, the back portions containing the columns regarding drawing of rations are blank or there were irregular entries, but he stated that such irregularities will not matter much, since all the ration card holders had their family Ration cards and rations were not drawn twice for the same family. He submitted, that really on a look on all the cards, including the family ration cards, it will be established that there were more than one numbers/cards in a family and on a particular date, rations were not drawn twice. To bring home his submissions, Shri Das Chowdhury referred to the cross-examination of WW-120. He also referred to the evidence of WW-142 and the ration cards which he produced, in addition to the one which was annexed to his affidavit. In fact, on a reference to card Nos. 410 and 411 as produced by this witness, Shri Das Chowdhury wanted to establish his case that on the same date, rations have not been drawn twice. Thereafter, a point arose in respect of some ration cards, where in addition to the entries of rations as drawn, it was mentioned 1/2 or 1 and he pointed out, that such entries would relate to drawing of Kerosene oil, as they are available only in the column mentioned for oil. While on the affidavit of WW-142, it should be noted that the seal of the Notary before whom

the affidavit has been affirmed, was not on the writings, but the writings were over the seals, which to my mind, established the fact that the writings, whereby the above mentioned ration cards have been produced, were incorporated after the affidavit was affirmed. Shri Das Chowdhury of course denied such fact and wanted to explain the position, by submitting that whether the seals were on the writings or the writings were on the seals will depend on the ink used. Even assuming Shri Das Chowdhury was correct, but on going through and considering the writings on the seal, I think the observations which I have made, will have to be maintained. Shri Sinha, who initially produced these cards along with the affidavit, was also of the same view as that of Shri Das Chowdhury.

58. While on the question of filling up of the Ration cards or more particularly, the front portions of them, Shri Das Chowdhury, on a reference to the evidence of WWs 113 and 117 and more particularly to the serial "KA", wanted to point out that there were no infirmities in the matter of filling up the front portions of the Ration cards.

59. Shri Das Chowdhury candidly confessed that there were differences of age as mentioned in evidence of the witness and their Ration cards and the ages in evidence were really and in any cases higher than those mentioned in the Ration cards. He contended that such happenings were due to the fact that in duplicate of the Ration cards as produced, which were received in 1990, the ages were recorded on the basis of the ages as recorded in the earlier Ration cards. Since name of the earlier Ration cards were produced, there in my view, was no legal evidence on the basis of which, submissions as made, can be accepted or relied on. To establish his case, Shri Das Chowdhury referred to the recorded evidence of WW-129. It was also submitted by him that since Rations were allowed to be drawn on family Ration cards, so their genuineness should be presumed. As, excepting in one or two cases, no evidence of drawing of Rations on family Ration cards have been produced so, there was really very scanty and little legal evidence, on the basis whereof, such general submissions of Shri Das Chowdhury can be accepted. Is it not also strange, practically all the duplicate copies of the Ration cards were received by the holders concerned in 1990?

60. As indicated earlier, same Ration cards were issued by or under the signatures of Santi Chakraborty, a Commissioner of Siliguri Municipality, whose capacity to sign/issue in such manner as a Commissioner, was in doubt and disputed. Shri Das Chowdhury indicated, on a reference to the Ration card of WW-117 as issued by the said Shri Chakraborty and contended that since Ration was allowed to be drawn on such card, so the authority of Shri Chakraborty cannot also be doubted. Such isolated submissions, without further proof of the power of Shri Chakraborty, to sign and issue the Ration cards, cannot be accepted. In fact, excepting the submissions as aforesaid, there was no legal evidence in support of such submissions.

61. The characteristics of the Municipal Commissioner's certificates, their manner and form execution have been indicated and dealt with earlier and in details. While on them or their bonafides, Shri Das Chowdhury pointed out that when the certificates contained (i) the names, (ii) the other particulars of the workman concerned and (iii) the holders have been identified by the certifiers, to be knowing them for a long time, so the fact, since when he knew them, will be of no relevant consideration. Such bald submissions without further elucidating evidence are very difficult to be accepted.

62. While replying to the exceptions taken, on the Union subscription receipts as produced, it was stated by Shri Das Chowdhury that there would be no justification in not admitting or relying on them, since WW-1 has produced all the counter-foils (Exts. W-6 to W-6/5) of the concerned receipts and he also deposed that all the workmen concerned, were known to him and he himself produced all the Identity/Permit cards. It was also submitted by him that when the concerned receipts contained the names of the employees, the depots, where they were engaged and so also the name

of their employer as P.C.I. and that apart, WW-1 identified the workmen, who were members of the said Union, so the authenticity and admissibility of the receipts cannot be doubted. WW-1 really made bear and hold statements that he knew all the workmen concerned and that, to my mind, cannot be equated with the establishment of their identifications according to law. Thus, the submissions of Shri Das Chowdhury on this aspect are not acceptable.

63. Then came the question, whether the cause of the employees was espoused by the said union and I think, Shri Das Chowdhury appropriately contended that the consideration of that aspect, will not really be material in the facts and circumstances of this case.

64. On merits, Shri Das Chowdhury referred to the affidavits and evidence of all the employees, whose cases are now under consideration and contended that when they have categorically averred to be employed by the said Corporation or termination of them by the said Corporation, so their identifications regarding employment under the said Corporation should not only be presumed, but that fact may be accepted as true and duly proved, more particularly when, they boldly faced cross-examination on all points and aspects. I have discussed and considered earlier, if not in minutest details, but in great length, the evidence of all the employees and the character of their affidavits and I feel that the fact that the employees concerned, faced the cross-examination boldly, will be no ground, for accepting the submissions of Shri Das Chowdhury on the points as indicated. In fact, I feel and restate that the identities of the employees, for their employment under the said Corporation, have not been duly established and proved in any manner, through due legal evidence. It must also be indicated that WW-156 was required to produce his Ration card, but he has not done so.

65. I feel that the submissions of Shri Das Chowdhury, as indicated in paragraphs 43 to 64 have been duly answered in my findings already made and they will also indicate the submissions made by Sri Ghosh to the effect that there was no evidence, if the employees concerned now present before this Tribunal, were really the persons enrolled/worked at the relevant time, and there was also no evidence that these employees of the relevant time, have duly authorised the said union and if the verbal sayings of WW-1 and the employees concerned, will establish their identities. There was no provision in the Rationing Manual or any where, authorising a Commissioner of the Municipality to issue Ration cards, meaning thereby Shri Shanti Chakraborty and the ages declared by the employees concerned were based on assumptions and not on any legal evidence. I must keep on record that on 22nd November, 1991, a list of 56 workmen was filed by the said Union stating that they have already died and this list also contained the names of those employees as mentioned earlier by Shri Das Chowdhury and also as appeared from the evidence of WW-2.

66. As indicated earlier, my predecessor-in-office, before his retirement heard and took the evidence of WW-1 to WW-112. I think such evidence as recorded by him, should be discussed and considered now and before the submissions on them, as made by the parties are indicated.

67. In the written statements filed before him by the workmen as mentioned above, it will also appear that to establish their cases of identity and residence, the workmen mainly relied on, (a) identity Permit cards, (b) Municipal Commissioner's Certificates and certificates from other authorities, (c) Subscription receipts of the said Union and in some cases, xerox copies of Ration Cards have also been produced and relied upon. The Municipal Commissioner's certificates, like previous ones, have been issued by the Commissioners like Sarvasree R. Agarwal, N.C. Chakraborty, Bijoy Dey and N. Prosad, apart from the fact, that there are certificates issued by B.D.O. Panchayat and one Sri A. Bhatiacharjee. In fact, reliance have been placed on the Ration cards by WWs 8, 10, 23, 25, 27, 28, 29 to 36, 37 to 45, 47, in addition to the documents and records mentioned in (a) to (c) above.

68. The Identity Permit cards, of workmen in Serial Nos. 4, 7, 10, 13 to 16, 19, 21, 23, 26, 28, 29, 33, 34, 41, 43, 45 to 49, 52 to 53, 56, 57, 59 to 64, 67, 69, 70, 72

to 79, 81 to 88, 90, 92, to 94, 96, 98, 99, 101, 103, 104, 106 to 108, 111, 112, 114, 115, 117 to 119, 123 to 125, 127, 129, 130, 131, 135 to 138, 141, 143, 145 to 149, 151, 152, 155 to 157, 159, 160, 168, 171, 174, 185 to 190, 192 to 194, 197, 198, 200, 202, 205, 209, 211, 213, 220, 221, 224 to 228, 230, 238 to 240, 244 to 246, 249 to 253, 255 to 257, 259 to 261, 264, 265, 268, 270, 272, 273, 275, 277 to 279, 286 to 289, 291 to 294, 296, 298, 302, 303, 308, 313 to 316, 318, 320, 322, 323, 325 to 333, 335 to 338, 340, 342 to 345, 348, 352, 356 to 358, 361, 365, 366, 368 to 374, 376, 378 to 380, 383, 384, 390, 391, 393, 396, 397, 401, 402, 404, 406, 409, 412 to 420, 422, 424, 426, 428 to 430, 433 to 439, 442, 443, 445, 446, 449, 450, 457, 460, 463 and 464 were produced and sought to be proved by Sri Deo Prosad Paswan WW-1. The corresponding Identity Permit cards of the above serial number of employees will appear from his depositions. It was his evidence that the Identity Permit cards of all the abovementioned employees, excepting those of Serial Nos. 62, 159, 288, 289, 291, 292, 293, 294, 296, 298, 302, 303, 308, 313, 314, 315, 316, 318, 320, 322, 323, 325, 327, 328, 329, 330, 331, 332, 333, 335, 337, 338, 340, 343, 344, 345, 348, 352, 356, 357, 358, 361, 365, 368, 369, 371, 373, 374, 376, 379, 380, 383, 384, 390, 391, 393, 396, 397, 401, 402 and 404, 460 were under the signature of Sri J. N. Banerjee and himself and WW Nos. 460 and 463 were under the signatures of said Sri Banerjee and Bhadoi Sahani. As indicated earlier the said Sri Banerjee and his signatures were sought to be proved by the evidence of WW-4 Sri Jana. The abovementioned Bhadoi Sahani has not deposed. But he has been claimed by the witnesses to be the president of the said union and whose signatures were known to him.

69. On consideration of evidence, which will be dealt with and discussed later, my predecessor-in-office has recorded that there were resemblance of identities of WW Nos. 3, 5 to 17, 20 to 33, 36 to 42, 45 to 48, 49 to 76, 78, 79 and 81 to 83 and 85, 87, 102 and 105 to 112. He has also found that there were no resemblance of identities of WW Nos. 18, 19, 43 and there were some resemblance of identities of WW Nos. 34, 41, 80, 86, 104. So far WW Nos. 35, 77 it has been observed by him that there was no photograph disclosed. My Learned predecessor-in-office has not been able to make any comment on the identity of WW No. 103 in view of paucity of evidence.

70. My findings and observations in paragraphs 19 and 20 above, I feel, will also apply in these cases viz., that no reliance can be placed on the evidence in respect of the establishment of identities of employment of WW Nos. 3 to 112 under the said Corporation, even though my predecessor-in-office, returned his verdict in respect of many employees, who appeared to have resemblance with the photographs in the Identity Permit cards, as produced. The cases of those employees, who have no resemblance or some resemblance as found by my predecessor-in-office and whose particulars are mentioned in paragraphs 68 and 69, their cases can be kept out of consideration and that will also be position in respect of the other employees, whose particulars are mentioned by me in the said paragraphs of 68 and 69 since there were no photographs and as such their identities were also could not be established. Similar will be the case of WW No. 103 for the views as expressed by my predecessor-in-office and which I have indicated in the said paragraphs 68-69.

71. From the evidence of WW-1, it will appear that employees in Serial Nos. 48, 60, 61, 63, 70, 83, 90, 135, 136, 137, 157, 249, 298, 308, 318, 344, 369, 372, 391, 396, 424, 457, 460, were already dead on the date of his deposition, which continued till 21st March, 1990 from 22nd February, 1990. So, these employees cannot claim the benefits, when they, like other employees, whose cases will be cited hereafter, died even after 1975. According to the evidence of the witness, employees of Serial Nos. 21, 22, 23, 59, 77, 97, 104, 126, 132, 145, 150, 153, 176 and 203, will not perhaps be entitled to the benefits of consideration in terms of the directions of the Hon'ble Supreme Court of India, as there were grave doubts about their identity and existence. Same will also be the case of Bansali Paswan. Apart from the above, employees in Serial Nos. 414, 445, 50, 77, 97, 104, 126, 132, 136, 150, 148, 153, 154, 176 and 202 cannot also get the necessary advantage of identifications as there are grave doubts which have not been duly replied in evidence.

72. Let us now see, how far the employees have been able to establish, whatever they are worth, their identities of employment though other evidence, the particulars whereof, have been indicated in paragraph 12 above. In fact, I have also indicated earlier the particulars of other respective documents and records, which the employees have produced on this account.

73. Before I take up the discussion as mentioned in paragraph 72, I think, it will be better and convenient if I scan the evidence of WW-1 Des Prasad Paswan and so also that of Satya Bhushan Paul, MW-1, whose signatures have been alleged to be appearing in the Permit slips and have my comments on their evidence, WW-1 has claimed to be a workman in Serial No. 44 in the list of Annexure to the written statement of the said Union and has stated, to have worked in the said Corporation from 1965 to 20th July 1975 and that his identity/permit card was issued through and under the signature of Sri Dutta WW-4. He, in fact identified the said Sri Dutta in Tribunal. The Commissioner's certificate in his case, was issued by Shri Bijoy Dey and even though he possessed a Ration card, the same was not produced. I have already indicated in paragraph 68 about the identity/permit card of the employees mentioned therein and not only in the said paragraph, but also in paragraphs 69 and 70, I have indicated, my comments on those cards and the effects thereof, regarding the identity of the concerned employees. It was frankly admitted that excepting the said cards, there was really no other papers to show that the workmen concerned put their L.T.I. or signatures in presence of the officers, meaning thereby WW-2 and WW-4 and such evidence of WW-2 have been recorded by me earlier and in paragraphs 14 to 22. It was his further evidence that there was also no paper with him to show that the 464 employees were directly paid by the said Corporation and he has stated that they may be laying with them. Apart from the above, no other evidence has come in or lead in this proceeding. It was also the evidence of the witness that although he acted as a Sardar from 1972 to July 1975, and this fact will appear from the acquaintance rolls of the said Corporation, which are with them. Those records have not been produced by the parties. In fact, they were not also called for from the said Corporation duty by the said Union.

74. The witness has stated to be the Secretary of the Siligudi unit of the said Union from 1973 to December 1975, even though he has admitted to have worked upto July 1975. He could not also produce any paper to show that he was the Secretary of the Siliguri unit and has stated to have been appointed as such, verbally by the members of the Committee of the Unit. Is it not strange? He, in my opinion appeared to be a self-appointed leader, as there was no other evidence available. He stated to have passed the School Final Examination in 1964 and in the certificate, he was described as "Dusad" which is his caste and not "Paswan", which is his surname. It is very difficult and practically impossible to believe that in a certificate, one is described by his caste and not by his surname. So, this part of his evidence cannot be believed, the more so when, there is no such legal evidence available. In a question, which to my mind was very pertinent on the basis of the pleadings and submissions which was asked to him, if the 464 workmen concerned had applied for membership of the said Union, his answer was that even as a Secretary of the said Union, he was not in a position to throw any light. His evidence in respect of Identity/Permit card Nos. W-1/126, W-1/127, W-1/203, W-1/227, W-1/245, W-1/41, W-1/6, W-1/15 and W-1/5 were not very much happy, definite and convincing. It was also the specific evidence of this witness, that he did not work in Siliguri Depot. of the said Corporation after 1978 and was not in a position to testify how many of the 464 workmen were re-employed by the said Corporation in 1978. Then, how could he sign their identity cards or produce them for the signature of WW-2? On the basis of his evidence, I feel that it will be improper to accept his evidence or to rely on them, to establish the identity of the employees, relevant for employment in the said Corporation at the relevant period, the more so when, his evidence has travelled beyond the affidavits of the employees concerned, in respect of their employment under the said Corporation. Turning now to the evidence of MW-1, it would appear that he was the District Manager of Siliguri Branch of the said Corporation from

1971 to 1975 and had no connection or concern with the New Jalpaiguri Depot of the same. He denied his signature on Exts. W-7/20, W-7/22 and W-7/26 and has stated that he was posted at C.S.D. and not at G.F.D. and there was no Chief Labour Inspector, when he was posted at C.S.D. It was also his evidence that during his time, there was no system of issuing identity cards or permit slips. He deposed that he never issued the Permit Slips Nos. 114 and 127. Apart from the above, he denied the validity of the statements made in the affidavits of WWs 144 and 145. It was also his evidence in cross-examination that there was no other person in his name working at the material time, but there was one Sri Satya Bhushan Paul and the witness signs as Satya Paul and there was also no other person in his name as the District Manager in the Siliguri Division. He could not identify the signatures on the Permit slips. It should be noted that both before me and also before my predecessor in office, he signed his statements as Satya Paul. He admitted that in Ext. W-8 there was same signature which was claimed to be like him and by Ext. W-9, by a document, claimed to be like him, the said Union was invited to attend a meeting. He of course admitted his signature in Ext. W-10 and to have deposed before this Tribunal earlier. I have indicated earlier in paragraph 29, why the signature of the said Sri Paul, appearing in the Permit Slips, cannot be relied upon.

75. Let me now take up for consideration the evidence of the employees and the effect thereof as indicated in paragraph 51.

76. The evidence of WW-3 shows that he could not produce any evidence of his membership of the said Union for the relevant period or that, he was in the direct employment of the said Corporation upto 1975. For his residence at Siliguri, he has produced a certificate from a Municipal Commissioner, typed and prepared in a stereotyped manner which suggests that the same was kept prepared earlier and filled up and signed subsequently. The witness spoke about his age on assumption only. Excepting his affidavit, he lead no evidence to prove his employment with the said Corporation. He has produced his identity/permit card, the evidentiary value whereof, I have indicated earlier, I feel that WW-3 has not been able to prove his identity, residence at Siliguri and his employment by F.C.I. or termination by them. On the basis of the evidence as tendered, he, in my view, will not be entitled to the benefits of the judgement of the Hon'ble Supreme Court of India, more particularly when, his residence, even at Siliguri or his membership of the said Union or Ration card, if any, will not establish his identity as an employee of the said Corporation at any time. The evidence of WW-5 was no better than WW-3 and was in the same line and my observations are also the same on his evidence. He has further admitted to have no knowledge regarding the contents of his affidavit. He has also stated to have produced the certificate of the Commissioner for the purpose of this case. He has stated that his identity/permit card was filled by WW-1 but the said witness has not said fact. His identity was found to be resembling with the photograph in WW-1/2, about the evidentiary value of which, I have indicated earlier. Same was the position of the evidence of WW-6 and WW-7 in respect of their membership of the said Union for the relevant period, their employment, residence and identity/permit cards. Excepting that, WW-8 has produced a xerox copy of Ration card and has not filed any certificate from the Commissioner, his evidence was in the same line of WW-3 and my observations on his evidence are also in the same line. There is no evidence in the Ration card that rations were drawn by him and it is practically impossible to read the contents of that card. My observations in respect of the identity/permit card are the same as above. Barring that, along with the Commissioner's certificate, which had the same characteristics of other certificate WW-9 has annexed a photograph with the same, which also differed from his photograph affixed to his identity/permit card, regarding the character of which my observations will be the same as above. The employee WW-10 has produced along with his affidavit, apart from the documents (a) to (c) as mentioned in other affidavits, his Ration card, the back side whereof was absolutely blank and it is very difficult to read the front portion and since his entire evidence was in the line of WW-3, my observations on his evidence are the same as WW-3. My observations regarding his identity/permit card will be the same like others. Here of course the certificate from the Commissioner was not in the stereotyped manner,

77. The employee WW-11 has not filed any certificate from the Municipal Commissioner, but he has filed other documents like WW-3 and in addition thereto, a Ration card, the back portion whereof was absolutely blank and with great difficulty the entries in the front portion could be read. It was not in his evidence as to when he got the said card, positively. Save as aforesaid, his evidence was in the same line of WW-3 and suffered the same defects and so my observations on his evidence are the same as WW-3. My findings regarding the identity/permit card are the same as above. The employee WW-12, has produced certificate of the B.D.O. with his photograph with beard and moustache and which admittedly differed with his photograph in the identity/permit card, which was without beard and moustache. To prove his evidence and identity, he appeared after shaving his beard and moustache on the next date of his examination and my predecessor in office found resemblance in his appearance and photograph. My observations regarding the said card are the same as above. This witness has produced a subscription receipt of one Suresh Paswan and that too not of the relevant period and his evidence also suffered the same defects like the evidence of WW-3. So my observations on his evidence are the same as the evidence of WW-3. The employee WW-13 has led his evidence with the same defects like WW-3 and regarding his identity/permit card my observations are the same. My observations on his evidence are the same as WW-3. The name of the employee WW-14 is Suresh Paswan, but he annexed with his affidavit, a subscription receipt of one Ramo Sahani. The certificate of the Commissioner as produced by him was of course a hand written one. Save and except this his evidence was also in the line of WW-3 and suffered the same defects. So my observations on the evidence of WW-3 will apply here. Regarding his identity/permit card my observations are the same. The back side of the Ration card of WW-15 is absolutely blank and the front portion is so blurred that no reliance can be placed on the same. He has not produced the Union receipt for the relevant period. His evidence on the other points were the same as WW-3 and so my observations on his evidence are the same as WW-3. Regarding the identity/permit card my observations are the same as stated earlier. The employee WW-16 has not produced the subscription receipt for the relevant period. The earlier Tribunal has found resemblance of this witness with his photograph in the identity/permit card. My observations regarding the said card are as indicated earlier. The evidence of this witness on other points are practically the same as WW-3 and so my observations on his evidence are also the same as WW-3. The certificate of the Commissioner of the employee WW-17 was in the same stereo typed form and my findings about such form are the same as earlier, so also his identity/permit card, even though the erstwhile Tribunal has found resemblance and verification of his photograph. The findings on the other points are the same as WW-3 and so also my findings on his evidence. A xerox copy of a Ration card with absolutely blank entries at the back of the same was produced by WW-18. The erstwhile Tribunal itself found it difficult to pass any remark regarding identification on the basis of the identity/permit card of the witness. His submission on the other points were the same as that of WW-3 and on his evidence, I return the same verdict as WW-3. The certificate of the Commissioner in respect of the employee WW-19 was in the same stereo typed form and my observations thereon are the same as stated earlier. His submissions on the other points were the same as of WW-3 and the earlier Tribunal itself felt the difficulty in having his identity verified and established on the basis of the identity/permit card as produced. He has not produced his Ration card although he had one, earlier. On other points the witness submitted the same as that of WW-3 and so my findings on his evidence are also the same as WW-3. The employee WW-20 has produced a subscription receipt which was not of the relevant period and the earlier Tribunal found his identity to be the same as in the identity/permit card. My observations in respect of the said card are, as stated earlier. On other points his evidence was the same as WW-3 and so also my findings on his evidence are the same as WW-3.

78. In addition to the documents mentioned in (a) to (c) as mentioned earlier that the witness WW-21 (W-1/79) has in addition produced his Ration card, the back portion of which was absolutely blank and the same was signed by Sri Shanti

Chakraborty, who as mentioned earlier, was not an authority of the Rationing Department, but a Commissioner of the Municipality. He also issued the hand written certificate dated 28-1-90. I observe the same as in paragraph 56 regarding the certificate of Sri Chakraborty and his competency. The Union receipt was not also of the relevant period. It is really strange, that a Commissioner, who has certified about the residence of the workman, has also signed the Ration card, most unauthorisedly as mentioned earlier. In fact, his authority to sign and issue the Ration card was in dispute and was not proved. Save and except the above, other submissions were the same as that of WW-3 and so my findings on his evidence are the same as in paragraph 54. The earlier Tribunal initially could not testify his identity with his photograph, but ultimately opined, that there was resemblance. In addition to the records as mentioned in (a) to (c) in paragraph 45, the employee WW-22 (W-1/24) has produced his Ration card (xerox copy), either sides of which was illegible. He has also produced a typed certificate from the Municipal Commissioner regarding his identity and residence, apart from his transfer certificate from J. K. High School, Begusarai and a receipt of the said Union, which was not for the material period, other submissions were in the same line as that of WW-3 and so the observations on them will be same as in paragraph 54. The earlier Tribunal has found resemblance of his identity with his photograph. Same records as above, were produced by the employee WW-23 (W-1/21). The Ration card was blank in respect of the drawing of the Rations and was a duplicate. The certificate of the Commissioner was in the same stereo typed form with the same characteristics of certificate issued by Bijoy Dev and the subscription receipt was not of the relevant period. Resemblance of the witness was found with his photograph in Ext. W-1/21. Same submissions like WW-3 were made on the basis of the evidence as produced and so my findings thereon are the same as in paragraph 54. The evidence of WW-24 (Ext. W-1/19) was no better than these of WW-3, who produced records as in (a) and (c) as mentioned in paragraph 45. The earlier Tribunal has found resemblance in Ext. W-1/19. Other submissions were the same as WW-3 and so my findings on them are as in paragraph 54. Similar records as of WW-24 were filed by the employee WW-25 (Ext. W-1/158). The back of the Ration card was absolutely blank and shows no entry or any drawing of Ration and the front portion of the same was absolutely illegible. The Commissioner's certificate was in the same stereo typed and subsequently filled up form and manner. My observations regarding that will be the same like other such cards. The Union receipt was not of the relevant time and regarding the identity/permit card, my predecessor in office found resemblance with the appearance and the photograph as affixed. I have given earlier in general, my views about such cards. The submissions on other points were the same as WW-3 so my findings thereon will be the same as in paragraph 76.

79. The employee WW-26 (Ext. W-1/158) has produced, excluding the Ration card, other records as mentioned in (a) to (c) at paragraph 45, for the purpose of establishing his identity and residence. The card was not in the usual form. The Union receipt was not of the material time. He could not establish his residence at Siliguri at the relevant period from 1973 to 1979, although he claimed to have worked under the said Corporation from 1973 to 1975 and for some months in 1978. The story was not believable, since he could not establish his residence at Siliguri for that period. Submissions on other points were the same as WW-3 and so above will be my findings as in paragraph 76. Workman WW-27 (Ext. W-1/25) has produced documents (a) to (c) and (d) as mentioned earlier. Along with the Commissioner's certificate, which was in the same stereo typed form, he has produced the photograph. My observations regarding such certificate are the same as indicated earlier. The back side of his Ration card was absolutely blank and the front portion could be read with some difficulty. The said card suffered with other irregularities as mentioned earlier. He has produced a subscription receipt of the Union, which again was not of the relevant period. He has not stated when his service was terminated in 1975. The photograph in the identity card appeared to be resembling with his identity card, as found by the earlier Tribunal. My observations regarding identity/permit card as mentioned earlier will also apply in this case. Regarding the other points, same submissions as of WW-3 were made and so my observations on



them will be the same as in paragraph 76. The workman WW-28 (W-1/26) has produced documents (a) and (b) like WW-27. The Commissioner's certificate was in the usual stereo typed form. My comments regarding these typed certificate as mentioned earlier will apply with equal force in this case. Back of the Ration card was absolutely blank and the front portion contained the same irregularities as indicated earlier and could be read with great difficulty. He has produced only one subscription receipt, that too, not of the relevant period. My predecessor-in-office has found resemblance of the identity of the workman alongwith his photograph of the employee was in the same stereo-typed form regarding the admissibility of the same as mentioned earlier. My observations in paragraph 76 will also apply with same force in this case. Similar documents like WW-28 were produced by the workman WW-29 (Ext. W-1/28). The back portion of the ration card was absolutely blank and the front portion could be read and it was found that the same was issued under the signature of Sri Santi Chakraborty about those capacity to issue certificate was in dispute and I have recorded that earlier in paragraph 76. The certificate of the Municipal Commissioner containing the attested photograph of the employee was in the same stereo-typed form and my observations in respect of the same are the same as made earlier in respect of such certificate. This workman has produced one Union receipt, which was not of the relevant period. It should also be noted that although the Municipal Commissioner's certificate was dated 18-2-1990, the photograph affixed therein was of 5/6 years old. The identity of this workman was found to be resembling with his photograph in the identity/permit card. My comments in respect of the identity/permit card as mentioned earlier will also apply in this case. The employee could not produce any paper of his termination of service by the F.C.I. Submissions on other points were the same as that of WW-3 and so also my findings on them and as made in paragraph 54. In this case, the workman WW-30 (Ext. W-1/33) has produced documents (a) to (d) like the previous employee WW-29. The Municipal Commissioner's certificate has the same defects of typed in a stereo-type form and filled in later and my comments in respect of those certificates as made earlier, will apply in this case. The back side of the Ration card was absolutely blank and the front portion could not be read like other Ration cards. There is no signature of the holder in the card. The only subscription receipt which was produced by the employee was not of the relevant period. Even though the earlier Tribunal found resemblance of appearance of this employee with his photograph in the identity card, I think the views as expressed in respect of such cards earlier, will apply. Similar documents were produced by the workman WW-31 (Ext. W-1/42) and my findings on his evidence are the same as in paragraph 76. His Ration card appeared to bear the same defects as that of WW-30 and the Commissioner's certificate in this case was of course a hand written one, but that will not establish his employment or residence at Siliguri at the relevant period. Identity of this workman was found to be resembling with his identity card by my predecessor-in-office, but to my mind, the said card contains the same defects as mentioned by me earlier and so my comments as made earlier, will apply and as such, the same cannot be relied upon. Submissions on the other points were the same as in the case of WW-3 and thus I make the same comments on them as made in paragraph 76. The workman WW-32 (Ext. W-1/36) has produced documents (a) to (d) as that of WW-31. The union receipt as produced by him was not of the relevant period and the back side of the ration card was absolutely blank and the front portion was legible, but the same appeared to be with the same defects like other Ration Cards. The Commissioner's certificate in this case a hand written one with L.T.I. of the employee, attested. That was issued on 20-4-1990. The said certificate, in my view will not establish either employment or his residence at Siliguri at the relevant period. The identity of this employee appeared to be resembling with his photo in the identity/permit card by my predecessor in office, but that in my view and for the views which have been expressed earlier, will be of no assistance in this case. This employee has not been able to establish his employment with the said Corporation and termination by them in 1975 and 1978. My findings on his evidence will be same as in paragraph 76. The employee WW-33 (Ext. W-1/13) has produced the similar 4 documents as that of WW-32. The only subscription receipt produced by him was not of the relevant period and Municipal certificate, which was a

hand written one, has not established his residence or employment at Siliguri at the relevant time. The Ration card as produced was absolutely blank in the back portion and the front portion of the same, which could be read with some difficulty, had the same defects like other Ration cards. Even though the identity of this employee was found to be resembling with his photograph in W-1/13 by my predecessor-in-office, yet I feel that the views which I have expressed in respect of those cards earlier, will apply with equal force in this case. The employee has not been able to establish his employment and termination by the F.C.I. in 1975 or 1978. My findings on his evidence on the other points are the same as in paragraph 76. Similar 4 documents were produced by WW-34 (Ext. W-1/48). On comparison, my predecessor-in-office has found light resemblance of the identity of this employee and his photograph in identity/permit card. For that and also for my views in respect of these cards earlier, I think the same will be of no help or assistance to the employee. The Ration card as produced was without any signature of the holder and contained the same defects like other Ration cards and the back portion of the same was absolutely blank. Since the Municipal Commissioner's certificate was in the same stereo-type typed form, my observations as mentioned earlier will apply with equal force. The union receipts as produced by him admittedly were not of the relevant time. My findings on his evidence on other points will be the same as in paragraph 76. The workman WW-35 (Ext. W-5/1), produced similar 4 documents like WW-34. The Identity Slip contained no photograph and as such, the same is in my view and for the views, I have expressed earlier, cannot be relied on. The Ration card in his case was issued under the signature of Shanti Chakraborty about the authority of whom, I have commented in paragraph 78. The back portion of the ration card was absolutely blank and the said card suffered from the other defects as pointed out earlier. The Commissioner's certificate was of course, a hand written one and the same was not only full of mistakes, but the same in view even though produced an attested copy of the photograph of the employee, will not help him. The subscription receipts were not of the relevant period. Save as above, similar submissions were made in respect of the other portion of his testimony like WW-3 and my findings thereon are the same as in paragraph 76. The workman WW-36 (Ext. W-1/42) has produced 4 documents like that of WW-35. The ration card as produced had the same defects as that of WW-35. The Commissioner's certificate was also issued in a stereo-typed form and my comments are just the same like other such certificates. The Union receipts as produced were not of the relevant period. The appearance of this employee was found to be resembling with his photograph in the identity/permit card, but for the views which I have expressed earlier in respect of those cards, I think that the same will be of no assistance or any help, even though my predecessor-in-office has observed that the resemblance of the employee appeared to be same as his photograph in the identity/permit card. He has not been able to produce any evidence of his employment with F.C.I. from 1973 to 1975 or his termination in 1975 and 1978. My observations in paragraph 54 will also apply in this case. The employee WW-37 (Ext. W-1/43) produced similar 4 documents like WW-3. The certificate of the Commissioner which was a hand written one has not established his residence or employment at Siliguri. The Ration card as produced bore the same defects including that there is no signature of the holder and the back portion of the card is absolutely blank. There was no union receipt produced for the relevant period. Even though my predecessor-in-office has found the identity resembling with the photograph in his identity/permit card, I feel that the views which I have expressed in respect of such cards earlier will apply in this case. On other points of his evidence, I feel that my observations in paragraph 76 will apply. The employee WW-38 (Ext. W-1/52) has also produced similar 4 documents like WW-37. The Commissioner's certificate as produced, was in the same stereo-typed form and in my view, suffers the same defects like other such certificates. The back portion of the Ration card was absolutely blank and front-portion of the same could be read with great difficulty, and the said card appeared to be with similar defects and without the signature of the holder. The only Union receipt which was produced was not of the relevant period. Even though my predecessor-in-office has found the identity of this employee resembling with his photograph with his identity/permit card, I feel, my observations

in respect of such cards as made earlier, will apply in this case. He has not been able to produce any evidence of his living at Siliguri or his employment and re-employment with F.C.I. On his other evidence, my findings in paragraph 54 will apply.

80. The workman WW-39 (Ext. W-1/47) has produced the 4 documents which were produced by WW-38. Regarding his identity card, my predecessor-in-office has found resemblance of identity with him and his photograph in the identity/permit card. My observations regarding admissibility of the said card are the same as indicated earlier. The Municipal Commissioner's certificate as produced was in the same stereo type typed form, subsequently filled up, so I make the same comments as made in respect of other such certificates. The back portion of the xerox copy of the Ration card was absolutely blank and the front portion of the same could be read with great difficulty. I feel it not safe to rely on the same. The witness has not produced Union subscription receipt for the relevant period. He has of course not been able to prove his employment upto 1975 or in 1978 and has not said anything about his termination. Regarding other points, submissions were same like the case of other employees and my observations on them are the same as indicated in paragraph 76. The workman WW-40 (Ext. W-1/45) has produced similar documents as that of WW-39. His identity has been found to be resembling with the photograph in the identity/permit card by my predecessor in office. My observations regarding the admissibility of the same are the same like other identity cards. The Ration card as produced was absolutely blank on the back portion although the front portion of the same was legible. But, the said card appeared to be with the same defects like other cards as mentioned earlier. The Municipal Commissioner's certificate as produced was of course hand written, but the same is in my view cannot help the employee to establish his residence at Siliguri of the relevant time. One of the subscription receipts was of the relevant period, but the others were not. In any event, those receipts will not be of any help or assistance to establish his residence at Siliguri or his employment with the said Corporation. He has not been able to establish his date of employment and termination in respect of the years under consideration. My findings at paragraph 54 are also applicable in this case. The workman WW-41 (Ext. W-1/46) has produced similar 4 documents like WW-40. My predecessor-in-office has found slight resemblance of his appearance and the photo in the identity/permit card. In view of such findings and also my observations as made earlier in respect of such cards, I think no reliance can be placed on that card. The Municipal Commissioner's certificate was in the same stereo-type typed form and as such, my comments on the same will be the same as my comments in respect of such certificates as made earlier. The certificate as produced was also full of over-writings which have also not been explained. The subscription receipt as produced, is not for the relevant period. Regarding the other points, same submissions were made in respect of his identity and residence like WW-3 and as such, my findings will be the same as in paragraph 76. The workman WW-42 (Ext. W-1/76) has produced similar 4 documents like WW-41. My predecessor-in-office has found his identity to be resembling with the photograph in the identity/permit card. The Ration card as produced, was absolutely blank at the back portion and the front Pawan". Thus, it is very difficult to rely on the xerox copy card and even though the witness has said in his evidence that he had put his LTI against the column No. 7, yet on the xerox copy of the Ration card, he said L.T.I. has not appeared and instead thereof, is mentioned "L.T.I. of Sib Paswan". Thus, it is very difficult to rely on the xerox copy of the card and the more so when, it would also appear that the counter foil of the Ration card has not been detached. The Commissioner's certificate in this case was issued in a typed certificate, subsequently filled in and that in my view, has established that the same was prepared earlier. One of the subscription receipts as produced, was of the relevant time, but these receipts in my view, will not go in any way to establish the residence of the employee at Siliguri or his employment in the said Corporation. My findings on other evidence are the same as in paragraph 76. The workman WW-43 (Ext. W-1/39) has produced similar 4 documents like that of WW-42. Regarding his identity, my predecessor-in-office has found that since major portion in the face of the photograph has been spoiled, so it is very difficult to

make any remark regarding resemblance on verification of such photograph with the deponent. In that view of the matter and also in view of my earlier observations in respect of the cards, I think no reliance should be placed on the same. The certificate of the commissioner in this case was hand written, but I make same observations in respect of such certificate as made earlier, as that has not established his residence at Siliguri at the relevant time and so also his employment with the said Corporation. The xerox copy of the Ration card was absolutely blank on the back portion and the front portion of the same was legible, but the same contained the similar defects like the other Ration cards and as such, no reliance can be placed on the same. One of the Union subscription receipts was of 1974 and others were not and as such, I have the same observations in respect of them as I have made in respect of WW-43. My other observations on the evidence will be the same as in paragraph 76. The Employee WW-44 (Ext W-1/73) has also produced similar 4 documents like WW-43. My predecessor-in-office, has on verification, found resemblance of the deponent with the photograph in the identity/permit card. But, for my observations as made earlier in respect of those cards, I feel that no reliance can be placed on the card. The xerox copy of the Ration card as produced, is blank at the back side and the front portion of the same is legible, but the same contained similar defects as mentioned earlier, so my observations will be the same as made in respect of WW-43. The subscription receipts as produced were not of the relevant time. Regarding other points in respect of employment, termination and residence, similar submissions were made and in respect of them, I make the same observations as in paragraph 76. The workman WW-45 (Ext W-1/27) has produced same 4 documents like WW-44. He himself, in no uncertain terms, stated that on the identity/permit card as initially produced (Ext W-1/23) there was the photograph of his brother Ram Savak Paswan, who is also known as Sevak Paswan, and then it appears that without due disclosure, he produced Ext. W-1/27, claiming the same to be his own and my predecessor-in-office has found resemblance of his identity with the said photograph in that card (Ext. W-1/27). In that view of the matter and also in view of my earlier observations on the cards, I think no reliance should be placed on the identity/permit card. The xerox copy of the Ration card is absolutely blank on the back portion and the front portion was legible. The said front portion also contained the similar defects like other Ration cards, apart from the fact, the same was issued under signature of Shanti Chakraborty, about whose capacity of issuing such cards was in doubt and I make my observations on the cards issued by him earlier and those in paragraph 78 will apply. The Commissioner's certificate was in the same stereo-type typed form, subsequently filled in and as such, my observations will be the same. The subscription receipts as produced were not of the relevant time, so I return the same verdict in respect of them as made earlier and so also my observations as made in paragraph 54 in respect of the other points. The employee WW-46 (Ext W-1/51) has produced documents (a) to (c) as mentioned in paragraph 45 above. His identity has been found to be resembling with his photo in the identity/permit card by my predecessor-in-office. For the views, which I have expressed earlier in respect of such cards, I think no reliance can be placed on the same. The Municipal Commissioner's certificate was a hand written one and that was also signed by Shanti Chakraborty. My comments in respect of that certificate will be the same as made earlier in paragraph 78. The Union subscription receipts as produced, were not of the relevant period. So in my view they cannot ensure to the benefit of the employee in any way. Regarding other points, similar submissions as WW-3 were advanced and I make same observations in respect of them as made in paragraph 76. The workman WW-47 (Ext. W-1/53) has produced similar 4 documents like WW-45. My predecessor-in-office has found his identity to be resembling with his photograph in the identity/permit card. For my observations as made earlier in respect of these cards, I think no reliance should be placed on the same. This employee has produced the certificate from Badai Deb, a member of No. 1 Phulbari Gram Panchayet. It has come out from his evidence that even though the employee is a resident of Nabagram Gram Panchayet the said Sri Deb was not a member of that Panchayet but he was a member of another Panchayet as mentioned. The xerox copy of the Ration card as produced is absolutely blank in the back portion and the front portion,

to some extent is legible, but there was some evidence of pasting. Apart from the above, the said card contained the similar defects like other cards as mentioned earlier. Thus, I feel, it will not be safe to rely on that card, for any purpose whatsoever. The subscription receipts as produced was not of the relevant period, so my comments in respect of the same will be the same as made earlier in respect of other receipts. Regarding other points as involved, similar submissions as in the case of WW-3 and WW-8 were made and I retain the same verdict in respect of them and as made in paragraph 76. The workman WW-48 (Ext. W-1/37) has also produced similar records like WW-47. My predecessor in office has found resemblance of his identity with the photograph in the identity card. But, for the views I have expressed and observations as made in respect of those cards, I think no reliance can be placed in the same. The xerox copy of the Ration card was absolutely blank on the back portion and the front portion, though legible, contained the same defects as mentioned earlier. So, no reliance can be placed on the same. The evidence about the certificate was in the same stereo-type form, filed in subsequently and as such, my comments in respect of the same will be the same as made in other cases. One of the subscription receipts was of the relevant period and same observations in respect of the receipts and produced and made by me earlier, are made. In respect of other submissions I make similar observations had made in paragraph 76.

81. The above are first set of evidence dealt with by my predecessor-in-office. Then, he took up for consideration the second group of evidence of WW-49 to 83 and thereafter, the third group, WWs 84 to 112.

82. Let us now consider the case of the second and third group of employees as mentioned above.

83. Since the affidavits, evidence in examination-in-chief and cross-examination were practically on the same line, tenure, time and manner. I propose not to deal with the evidence of the employees in such details, as I have done earlier and so, I propose to deal with the evidence on respective heads, aspects, items and incidentwise basis. The respective identity card numbers of the employees will appear from their evidence as recorded by my predecessor-in-office.

84. So far WW Nos. 49 to 76, 78, 81 to 85, 87 to 102 and 105 to 112, my predecessor-in-office found their identities with their photographs in their identity/permit cards. But because of my findings earlier on the evidence of WWs 1, 2, and 4, I think no reliance can be placed on them regarding their identities in respect of their employments under the said Corporation. It has been found by my predecessor-in-office that there were some resemblance of the identities of WW Nos. 80, 86 and 104, with their photographs in the Identity/Permit Cards, the identity of WW No. 77 could not be verified as his photograph was spoiled and no remark was possible, so far as the identity of WW No. 103, as the photograph in the Identity/Permit card was not his, but the same was of his brother, as he claimed that his brother Lalo Shah had worked under the said Corporation and thus he relied on his Identity/Permit card. In such view of the matter, I am of the view that the workmen cannot get the benefits of identification for employment under the said Corporation even though with the certificate of the Municipal Commissioner, the said WW-103 has produced his photograph, attested by the Commissioner.

85. On consideration of the evidence, it appeared that the front portion of the Ration Cards of WW Nos. 49 to 61, 63 to 71, 73 to 82, 85 to 91, 93, 96 to 105 and 107 to 112 were legible. There was no signatures of the holders in the xerox copies of the Ration cards of WW Nos. 49 to 71, 73 to 91, 96 to 112, which go to establish that there were thus no signatures also in the originals, the Ration cards of WW Nos. 72, 95 and 106 were absolutely blurred, and those of WW Nos. 52, 63, 67 and 95 were under the signatures of Shri Shanti Chakraborty, as the issuing authority, who, as mentioned earlier, had no such authority and could not in any event be authorised in that behalf. There was no Ration card produced by WW No. 92 and the Ration cards of WW Nos. 63 and 83 were also not legible. All the Ration cards, it should be mentioned, were duplicate and xerox copies and thus, they in view

of their character and conditions, would not be enough to establish the identity of the holders and their identities or employment under the said Corporation and so also their residence. It should also be noted that all the cards were said to have been received in or about 1990, in lieu or exchange of the earlier cards, but unfortunately, there were no believable and corroborate evidence of the existence of those cards. In the case of WW Nos. 72 and 106, apart from the blurred ration cards, hand written copies of them were produced without any or due proof. So they cannot be relied upon. It should be noted that Exts. W-7/16 and W-7/17 were signed by Shri Shanti Chakraborty, on whose capacity to sign, I have made my comments earlier and the signature of the issuing authority in Ext. W-7/18, a card issued to the Tamang family was not legible.

86. The certificate of the Municipal Commissioners and the other authorities and their characters, were as under:—

Certificates issued in favour of WW Nos. 49 to 50, 52, 54, 56 to 61, 63, 65 to 66, 68 to 69, 71 to 73, 76 to 82, 86, 88 to 93, 95, 96, 102, 106 and 110 were in the stereo-type typed form, having the necessary intrinsic evidence that they were typed earlier and thereafter, blanks were filed in and signed. The certificates in respect of WW Nos. 93, 103, 104 and 106 were by other authorities and the certificates in the cases of WW Nos. 52, 55, 62, 64, 67, 70, 76, 77 (with photograph), 83, 84, 85, 87, 94, 97 to 101, 105, 107, 108, 109, 111 and 112 were of course hand-written. The stereo-type typed certificates in view of their characters as indicated and so also the certificate in the case of WW No. 77, cannot be relied on and so also the certificates issued by the other authorities. Regarding the hand written certificates also, I feel it not safe to rely on them and they were not really enough to establish the identities of the workmen concerned. In any event, there were ample evidence to establish that all these certificates were procured for the purpose of this case and at a much later stage. The makers of the certificates were not also produced and examined.

87. It should further be noted that the certifying Commissioners/Authorities, in all the cases were not called to prove their certificates. They in fact as stated earlier, were obtained/given in a mechanical process and in any event, the contents of them have not been proved. So, it is really difficult to place any reliance on them. This observation will apply to all the workmen as examined.

88. It will appear from the proceedings that out of the subscription receipts, produced by the employees under reference, for establishing their membership and connection with the said Union and perhaps also for establishing their identities, the receipts of WW Nos. 50, 54, 56, 59 to 64, 66, 68 to 69, 71 to 75, 79 to 82, 84, 85 to 89, 92, 94, 96 to 97, 99, 101, 104, 106, 107, 109, 111 and 112 were not of the relevant period. So in my view, they cannot be relied on for the purposes of this case. One of the subscription receipts each of WW Nos. 49, 51 to 56, 58, 61, 70, 76 to 78, 81, 83 (two for the relevant period), 90, 91, 93, 98, 105, 108 and 110 were of the relevant period. So my observations in respect of the other employees as made, will also apply in this case and will not really help the employees concerned. It is true that counterfoils Exts. W-6 to 6/5 were produced, but they have not admittedly been correlated with the receipts as haphazardly produced by the workmen concerned, they in my view will not help them. Moreover, those counterfoils were not also duly proved.

89. Apart from the permit slip, which were marked exhibits and will be dealt with hereafter, WW Nos. 82 to 85, 87, 91, 93, 94, 97, 106, 108 and 109 have produced their permit slips with the signature of Shri Paul MW-1. As indicated earlier, Shri Paul has denied his signatures in some permit slips, which were shown to him claiming them to be his own. The signature, in the permit slips under discussion do not thus inspire confidence and counting the strike and comparing them with the signature



which he has denied to be his own, those signatures cannot also be relied upon. Shri Paul stated that the way and the manner in which he has signed the evidence now was his only signature and that was his signature in the Bank cheques. It must also be indicated that the way and the manner in which he signed his recorded evidence now and before are also tallied with the signatures, which he subscribed at the time of his earlier deposition. It was his evidence that the affidavits of WW Nos. 114, 127, 136, 144 and 145 were not correct. On being shown Exts. W-8, W-9, and W-10, he stated that they contained his signatures, apart from admitting his signatures on Exts. M-7. It appears that there were other permit slips being Exts. W-7/20, W-7/22 and W-7/26 and Shri Paul denied the signatures on them to be his own. The permit slips Exts. W-7/12 was objected to and the same was not proved. Permit slips Exts. W-5, W-5/1, W-5/8, W-7/20, W-7/23 (with evidence of passing), W-7/26, were not in their usual form and were not also duly proved. Permit slips No. W-5/2 was pasted on a post card and permit slip of Rajendra Sahani was also pasted on same form and the same was produced, but not marked as exhibit. In view of the above and also in view of the difference in the manner they have been shown to have been signed. I feel it not safe to rely on them and to accept the submissions as made in their support by Shri Das Chowdhury. Even if we assume that the signatures of the permit slips as admitted by Shri Paul to be his own, his signatures on the other permit slips, in my view and for the reasons as indicated earlier, appeared to be dissimilar and is it not strange that they were produced by the workmen concerned, when they were expected to be with the said Corporation and more particularly when there was no mark or entry showing when they last entered the shops/office of the said Corporation? Since Shri Paul has admittedly retired from the said Corporation, thus in my view and as submitted by Shri Ghosh, there was no earthly reason or possibility as to why he should depose falsely and to protect the interest of the said Corporation. In any event, there has been no such evidence on this point.

90. On consideration of the evidence, it will appear that the front portion of the Ration Cards of WW Nos. 49 to 61, 63 to 71, 73 to 82, 85 to 91, 93, 96 to 105 and 107 to 112 were legible. There was no signature of the holders in the xerox copies of the Ration Cards of WW Nos. 49 to 71, 73 to 91, 96 to 112, which go to establish that there was thus no signatures also in the originals, the Ration cards of WW Nos. 72, 95 and 406 were absolutely blurred, and those of WW Nos. 52, 63, 67 and 95 were under the signatures of Shanti Chakraborty, as the issuing authority, who, as mentioned earlier, had no such authority and could not in any event be authorised in that behalf. There was no Ration card produced by WW No. 92 and the Ration card of WW Nos. 63 and 83 were also not legible. All the Ration cards, it should be mentioned, were duplicate and xerox copies and thus, they in view of their character and condition could not be enough to establish the identity of the holders and their identity of employment under the said Corporation. It should also be noted that all the cards were said to have received in or about 1990 in lieu or exchange of the earlier cards, but unfortunately, there were no believable and corroborative evidence of the existence of these cards. In the case of WW Nos. 72 and 106, apart from the blurred cards, hand written copies on them were produced without any or due proof. So they cannot be relied upon.

91. The certificates of the Municipal Commissioner and other authorities and their character were as under :-

Certificate issued in favour of WW Nos. 49 to 50, 53, 54, 56 to 61, 63, 65, 66, 68, 69, 70 to 75, 78 to 82, 86, 88 to 93, 95, 96, 102, 106 and 110 were in the stereo type typed for having the necessary intrinsic evidence that they were typed earlier and thereafter, blanks were filled in and signed. The certificates in respect of WW Nos. 95, 103, 104 and 106 were by other authorities and the certificates in the cases of WW Nos. 52, 55, 62, 64, 67, 70, 76, 77 (with photograph), 83, 84, 85, 87, 94, 97 to 101, 105, 107, 108, 109, 111 and 112 were of course hand written. The stereo type typed certificates in view of their character and so also the

certificate in the case of WW No. 77, cannot be relied on and so also the certificates issued by the other authorities. Regarding the hand written certificates also, I feel it not safe to rely on them and they were not really enough to establish the identity of the workmen concerned. In any event, there are ample evidence to establish that all these certificates were produced for the purpose of this case and obtained at a much later stage. The makers of the certificates were not also examined.

92. It will appear from the proceedings that out of the subscription receipts, produced by the employees under reference, for establishing their membership and connection with the said Union and perhaps also for establishing their identities, the receipts of WW Nos. 50, 54, 56, 59 to 64, 66, 68, 69, 71 to 75, 79 to 82, 84, 85 to 89, 92, 94, 96 to 97, 99, 101 to 104, 106, 107, 109, 111 and 112 were not of the relevant period. So, in my view, they cannot be relied on for the purpose of this case. One of the subscription receipts of WW Nos. 49, 51 to 56, 58, 61, 70, 76 to 78, 81, 83 (two for the relevant period), 90, 91, 93, 98, 105, 108 and 110 were of the relevant period. So my observations in respect of the other employees will also apply in these cases and will not really help the employees concerned in this case.

93. Apart from the permit slips which were marked exhibits and will be dealt with hereafter, WW Nos. 82 to 85, 87, 91, 93, 94, 97, 106, 108 and 109 have produced their permit slips with the signatures of Shri Paul MW-1. As indicated earlier in paragraph 29, Shri Paul has denied his signature in some permit slips, which were shown to him to be his own. The signatures, in the permit slips under discussion do not thus inspire confidence and counting the strokes and comparing them with the signature, which he has denied to be his own, those signatures cannot also be relied upon. Shri Paul stated that the way and manner in which he has signed and recorded evidence was his only signature and that was his signature in the Bank books. It was his evidence that affidavits of WW Nos. 114, 127, 136, 144 and 145 were not correct. On being shown Exts. W-8, W-9 and W-10, he stated that they were his signatures, apart from admitting his signature in Ext. M7. It appears that there were other permit slips, being exhibits W-7/12, W-7/20, W-7/23 and even though they were objected to, they were duly proved.

94. I have thus scanned the evidence and recorded my findings in respect of the evidence of WW-1 to WW-112, which were recorded by my predecessor-in-office and Shri Das Chowdhury indicated that his submissions on them will be the same, as made in respect of WW Nos. 113 to 163, which were recorded by me and the particulars whereof have been indicated earlier and he will not advance any further submission on merits, since facts, points involved and so also the defence, were the same. The learned Advocate appearing for the said Corporation also agreed, that no further submission on merits will be necessary and they only wanted to submit on the identity cards of these employees, to which Shri Das Chowdhury also agreed.

95. On merits, Shri Das Chowdhury referred to the affidavit and evidence of all the employees, whose cases are now under consideration and contended that they categorically averred to be employed by the said Corporation or termination of them by the said Corporation, so their identifications regarding employment under the said Corporation should not only be presumed, but that fact must be accepted as true and duly proved more particularly when, they boldly faced cross-examination on all points and aspects. I have discussed and scanned earlier, if not in minutest details, but in great length, the evidence of all the employees and the character of their affidavits and I feel that the fact that the employees concerned faced the cross-examination boldly will be no ground, for accepting the submissions of Shri Das Chowdhury on the points as indicated. In fact, I feel and restate that the identities of the employees, for their employments under the said Corporation and their residence at Siliguri have not been established and proved in any manner, through due legal evidence. It must also be indicated that WW 156 was required to produce his Ration card, but he has not done so.

96. Mr. Ghosh stated that on the Identity cards, he has already indicated his basic arguments and the particulars whereof, have been mentioned earlier. He stated, while on the genesis of such cards that firstly, they were on the basis

of application filed by 203 employees and secondly, on the basis of necessary proceedings taken by the said Corporation. He also indicated that exhaustive list have been given by categorising the workmen concerned in this reference and he categorised them as under :—

- (1) those who are still working,
- (2) those who have left voluntarily on their own 6-1-1983,
- (3) those who are dead,
- (4) those who left before 1974 and
- (5) some non-existent workmen.

97. It should be noted that Shri Das Chowdhury filed a list of workmen, who are already dead and the said list shows the number dead employees to be 56. Mr. Ghosh, of course stated that according to the said Corporation, the number of the dead employees would be 47. Be that as it may, when the said Union has itself stated the number of the dead employee members as 56, I feel their list should be followed.

98. So far WW Nos. 1, 3, 5, 6, 7, 9, 10, 12, 13, 33, 15, 18, 17, 21, 24, 23, 25, 22, 27, 28, 45, 29, 56, 30, 32, 48, 43, 52, 31, 37, 36, 40, 41, 39, 34, 14, 46, 38, 47, 93, 70, 112, 60, 71, 51, 59, 76, 83, 75, 78, 55, 54, 57, 14, 61, 82, 42, 60, 72, 71, 111, 64, 50, 66, 88, 62, 72, 73, 67, 84, 74, 63, 33, 90, 86, 69, 68, 89, 87, 92, 79, 91, 86, 81; 110; 20; 85; 59, 65, 100, 211, 106, 98, 108, 95, 99, 105, 107, 96, 97, 53, 99, 104, 101, 102, 109, Mr. Ghosh submitted firstly, there were marks of pasting photograph on identity cards on water marks of bigger size of photographs and secondly, names and father's names of the workmen and their signatures were very fresh. In respect of WW-8 in addition to the above, it was indicated by Mr. Ghosh that there were marks of over writings of the name of the holder and according to him, the same was done with the purpose of conforming the name along with name of the workmen concerned in the Reference. In respect of WW-9, in addition to the general submissions, it was pointed out by Mr. Ghosh that no date has been mentioned in the identity card. While on WW Nos. 18, 43 and 77 in addition to the general statements as made, Mr. Ghosh pointed out that looking at the faces in the identity cards of the photographs, nothing could be made out and they were really very dirty. In addition to the above two submissions, in respect of WW-24, Mr. Ghosh pointed out the freshness of the signature amongst others in the cases of WW-56 and IITs in the other two cases. Similar submissions were also made in respect of WW Nos. 23, 24, 25, 27, 28, 30, 37, 14, 47, 77, 112, 71, 57, 61, 54, 62, 63, 73, 85, 59, 65, 90, 100, 108, 99, 97, 106, 107, 104 and 101. Mr. Ghosh pointed out in addition to the two submissions that the L.T.I. of WW Nos. 5, 7, 8, 9, 12, 13, 20, 33, 17, 30, 45, 29, 56, 59, 32, 40, 41, 39, 34, 38, 93, 76, 83, 75, 78, 57, 70, 44, 82, 42, 60, 72, 111, 64, 84, 66, 74, 79, 90, 86, 69, 67, 86, 87, 88, 68, 89, 90, 91, 91, 92, 79, 80, 81, 110, 20, 65, 100, 201, 98, 95, 105, 96, amongst others appeared to be fresh. He also pointed out that there is no name or father's name of the employee mentioned appropriately in the identity cards and the dates are also not legible. Then he pointed out that WW-11 (W-1/11) did not appear and the photograph in the card of WW-58 was not the photograph of the employee. The freshness of the photographs in the identity cards of WW-48 and WW-43 were pointed out by Mr. Ghosh amongst many others and it was also pointed out by him that on the photograph of WW-31 a portion of some signature like that of Dutta Babu is available and there is also evidence of pasting of the photograph in respect of WW-14 amongst many others. He also pointed to the over writings. Similar were his submissions in respect of photographs with regard to WW-46 38, 93 and 77. But so far WW-77 was concerned, he indicated that the photograph was really without any legible face or the face of the photograph has been defaced in such a manner that the same cannot be identified. Such submissions were also repeated in the case of WW Nos. 18 and 43. It was also pointed out that the photograph of WW-42 was admittedly pasted on the card after the paper on the board was torn or damaged. In respect of WW Nos. 71, 51, 76, 83, 75, 78, 85, 54, 57, 70, 44, 61, 82, 42, 21, 111, 64, 50, 100, 66, 88, 67, 84, 74, 63, 90, 86, 69, 68, 89, 92, 79, 91, 81, 110, 20, 85, 201, 106, 98, 108, 95, 99, 105, 107, 96, 97, 53, 99, 104, 101, 102, 109 Mr. Ghosh pointed

out apart from freshness of the photographs there are marks of pasting of the photographs on some existing marks of other photographs. Mr. Ghosh then pointed out there are signs of corrections of the name of WW-70. According to him, the ink used in the identity cards of WW Nos. 64, 80, 110 and 65 amongst many others would show and establish different types of ink was used and it was also pointed out by him that the colour of the photograph of the identity card of WW-62 has got to be considered and the photograph, as available on the identity card Ext. W-1/142 was not very clean but dirty and as such the same cannot be relied upon for establishment of bonafide existence of the said identity card. It was then pointed out by him that the signature of Assistant Manager available on the card of WW-85 has not been proved and there has in fact been no date of issue in the identity card of WW-100. It was further pointed out by Mr. Ghosh that the L.T.I.s of WW Nos. 15, 17, 52, 40, 98 and 101 amongst many others were so fade and indistinct, that they cannot be relied upon and similar would be the position in respect of the dates in the identity cards of WWs 59, 76, 83, 75, 78, 55, 54, 57, 70 and 44. It was further pointed out by Mr. Ghosh that another factor viz. excepting one or two Identity cards, all the cards were issued on the same date i.e. 14-4-1978 will have to be considered and that fact also will be enough to establish that all the cards were prepared and fabricated on the same day and with the ulterior motive and intention to have misleading evidence in this proceeding. As for example he indicated that out of all the identity cards of these groups of employees, only the card of WW-53 was shown to have been issued on 6-6-1978.

99. After placing the particulars of the Identity cards in the manner as indicated, Mr. Ghosh stated that the nature of those cards, as appearing, may be stated as under :—

- (1) some cards which are absolutely fresh;
- (2) some with photographs pasted, having evidence of pasting on a space, where some other photographs were earlier there;
- (3) although the cards were issued in 1978, the signatures therein, so also the names of the holders and their father's names were very fresh, which could not be, when the cards were issued, admittedly in 1978;
- (4) in some cases, signatures of FCI officials are not in existence, and the signatures in many cards, although prima facie seemed to be of such officials, they were not duly, legally and appropriately authenticated and proved. It was also pointed out by him that even the signatures, either of FCI officials or of Union officials were not in conformity with the statements as made by WW-1;
- (5) the Identity cards were not admittedly produced from the possession of the holders, but they were produced by the Union officials and by WW-1;
- (6) the ink used in the Identity cards, if not in all of them, differed.

As such Mr. Ghosh submitted that no reliance can or should be placed on them or taken them to be bonafide, genuine and duly proved. It was also submitted by Mr. Ghosh, in addition to the above, that the signatures of the holders in the Identity cards were not duly or appropriately authenticated and proved.

100. Mr. Das Chowdhury, while in replying the genesis of the Identity cards, submitted that they cannot be referred to or relied on, since there has been no evidence establishing such fact.

101. While on the photographs in the Identity cards of the manner in which they have been claimed to be pasted or used, Mr. Das Chowdhury submitted that such question would not arise or would really be immaterial, since the employee concerned are out of employment from 1975. He submitted that submissions of Mr. Ghosh on the point, are thus not tenable as the employees, as indicated by him earlier, have not approached the Tribunal merely for the sake of fun

102. As I have already indicated that it is better to follow the list of dead employees as filed by the said Union, since they will be in the know of the death of their members, Mr. Das Chowdhury also submitted that, that course would be the most efficient one in the facts of the present case and if the list of the Union is followed that will be most helpful and relevant and to that, the said Corporation cannot have any objection.

103. Mr. Das Chowdhury then submitted that the submissions made by Mr. Ghosh, regarding the manner of the Identity cards, whether they are fresh or not or the names of the holders or the names of their fathers' as appearing in them, were so fresh that no reliance can be placed on them, would be not of any material consideration. He submitted that it may be that some of the employees have kept the Identity card with due care and some have not, as a result whereof, some cards appeared to be fresh and some were not. He submitted that the freshness of the cards or otherwise, cannot be the possible and reasonable test to hold that the said cards were either fabricated or manufactured.

104. Mr. Das Chowdhury then submitted that the submissions of Mr. Ghosh regarding the signatures of the officials of the said Corporation or regarding those of the said Union, cannot be true as in majority number of Identity cards the signatures do really appear.

105. On scanning the list of working and non-working employees as filed by Mr. Ghosh earlier before my predecessor-in-office, Mr. Das Chowdhury pointed out that on the basis of such evidence, 203 employees were said to be working, 65 of them have left voluntarily, 35 had already left, there were 117 non-existent employees and 42 dead employees, out of 464 workmen concerned in reference. Those figures according to Mr. Das Chowdhury were fictitious, as according to him, workers in Serial Numbers 43, 128, 193, 194, 234, 313, 329, 360, 391 and 396 were really fictitious. He also claimed that the workmen in Serial No. 458 has been shown twice and the workman in Serial No. 118 has been shown, once in the working list and again in the list of employees, who have left. He pointed out that similar was the situation in respect of workmen in Serial Numbers 107 and 213.

106. To establish that the submissions of Mr. Ghosh as recorded earlier on the signatures of the authorities as mentioned or if the relevant Identity cards were proved, would appear to be untrue from the Identity cards of WW-43 (Ext. W-1/39), WW-18 (Ext. W-1/16), and W-77 (Ext. W-1/56), if the evidence of WWs 1, 4 and 39 are perused and considered. In fact, he stated that those witnesses duly proved the identity cards. It was also submitted by him that bonafide of the identity cards would also appear from permit numbers as mentioned at the top of the same and as such numbers tally with the numbers on the photographs. It was then submitted by Mr. Das Chowdhury, whether the stamp of the said Corporation on the Identity cards were legible or not, would also be of immaterial consideration of Ration cards as produced by the employees, are duly considered, wherefrom it would appear that the names and fathers' name as mentioned in the Ration cards also tally with the names and fathers' names of the holders of the respective ration cards. It was then submitted by him that even if the names and fathers' names in the Identity cards and Ration cards do not tally, the employees concerned should not be made to suffer. In support of his submission and permit number as mentioned earlier, Mr. Das Chowdhury referred to the Identity card of W-1/56, wherefrom such tallying of the permit number and also the number appearing would appear and apart from this, so far the holder of this card is concerned, he further pointed out that the signature on the card and affidavit filed by him also tallies, so there cannot be any justification of Mr. Ghosh's submissions on the point. While on this point, Mr. Das Chowdhury also referred to the evidence of WWs 1, 4, and 56 and further pointed out that WW-78, who at the time of deposition of WW-56, was present in the Court, also identified the photograph of WW-56 and that fact cannot also be overlooked for the purpose of establishing the Identity card as produced, to be due, legal and proper. While on the submissions of Mr. Ghosh with regard to WW-18 (Ext. W-1/16), to the effect that his photograph was indistinct, Mr. Chowdhury contended that such submissions will be of no avail or any effect, if the evidence of WWs 1, 2 and 18

are read, considered and construed duly and particularly when, the name and father's name in the Ration card of WW-18 really tallies with those as mentioned in his Identity card.

107. While on the submissions of Mr. Ghosh on the difference of ink, Mr. Das Chowdhury pointed out, that would be a question of fact and would only be a case of inference, as no questions were asked on the holders of the concerned cards and such fact being apparent no reliance can or should be placed on those submissions and should not be entertained. Mr. Das Chowdhury of course submitted that it is true that in many of the Identity cards, ink used differ, but that according to him, may be due to many and various factors and one of them may be that the name, father's name or dates were not written on the same date, but perhaps they were written on different dates.

108. Mr. Ghosh at one stage submitted that the signature on the Identity card of WW-102 (Ext. W-1/245) was not of the person concerned. To meet such submissions, Mr. Das Chowdhury referred to the affidavit filed by the employee concerned, his signature and also to his evidence where he has said that he has subscribed his signature in the presence of Dutta Babu.

109. Mr. Ghosh submitted about the signature in the Identity card of WW-100 (Ext. W-1/206) and claimed that the same was not the signature of the employee concerned. Mr. Das Chowdhury submitted that since no question was put to the employee concerned while he deposed, such submissions should not be considered.

110. In reply to the submissions of Mr. Ghosh to the pasting of photograph as indicated earlier, Mr. Das Chowdhury submitted that no reliance can or should be placed on such submissions, as no specific question was asked to the workmen concerned, when they were deposing, but on the other hand, the Counsel on behalf of the said Corporation at the stage of cross-examination, suggested the employees concerned that the photographs in the Identity cards were not their photographs and as such the bonafide of the Identity cards, containing the photographs cannot be disputed or disbelieved, since there are also stamps, tallying of permit numbers as indicated earlier and the names and fathers' names in the Identity cards also tallied with their Ration cards. To establish that no question was put to the employees on the above fact regarding photograph, but in cross examination, they were just asked that the photographs were not theirs. Mr. Das Chowdhury referred to the evidence of WW-12 (Ext. W-1/9) and WW-13 (Ext. W-1/14).

111. It was submitted by Mr. Das Chowdhury that if there were no seals on all the photographs, but they were there in some of them, those seals were very clear fresh and permit numbers in the Identity cards and the photographs, really tallied then presumption should be in favour of the workmen. Mr. Das Chowdhury referred to the cases of WW-101 (Ext. W-1/214), WW-62 (Ext. W-1/102), WW-10 (Ext. W-1/10) and WW-66 (Ext. W-1/100), in support of his submissions.

112. In reply to the suggestions and evidence of pasting as put forward by Mr. Ghosh, Mr. Das Chowdhury referred to and relied on the Identity cards of WW-6 (Ext. W-1/3), WW-7 (Ext. W-1/7), WW-9 (Ext. W-1/8), WW-8 (Ext. W-1/4), WW-12 (Ext. W-1/9) and WW-59 (Ext. W-1/17) and pointed out that if the half where the photographs are pasted as alleged and the inner and suppressed marks are compared with the other half of the Identity cards, it would appear that there are similar such marks, which he claimed to have occurred because the slips on which the names and other particulars of the employees are written and their photographs are affixed on the other half of the Identity cards subsequently, and for that the suppressed side marks of the Identity cards and so also such marks at the top or bottom of them have become apparent and such facts perhaps have given the feeling that the photographs were subsequently affixed on the marks as appeared because of the pasting of the slips.

113. On the basis of the evidence as recorded and discussed, so also the submissions as made by the parties, I feel that the identities of the employees under consideration viz. WW-1 to 163, in respect of their employment with the said Corporation have not been duly, favourably and beyond any reasonable doubts, established. It should be reiterated that even though there was no specific directions from the Supreme

Court, regarding the manner and the way, how such identities have to be established, I have, on consideration of the facts and evidence as disclosed, come to the conclusions indicated earlier.

114. It should, of course be kept on record that the submissions of Mr. Ghosh, regarding the pasting of the photographs on the Identity cards, as indicated earlier, were not with any substance, but, his other submissions will have to be held, to be of substance and accordingly, contrary submissions on them, as made by Mr. Das Chowdhury, cannot be accepted.

115. Thus, this is and will be my Award in respect of the cases and claims of WW-1 to WW-163.

116. Now, I shall deal with the cases of WW-164 to WW-218, as I have heard the submissions of the parties in respect of them, before recording the evidence of WW-219.

117. Apart from the statements as made through the affidavits and evidence by WW-1 to 112 and 113 to 163, which I have indicated and scanned earlier, the additional statements as mentioned hereafter, were available from the affidavits of WW-163 to 218, and it will appear now that there has been (1) change in the format of the affidavits, (2) it has been stated by the employees concerned that they were and are one of the employees within 464 employees, whose employment was discontinued with effect from 1975 by the said Corporation, (3) it has been stated that there was strike for one month in 1975 and after that strike, permit slips were issued to the employees concerned, signed by Paul Babu of the said Corporation, wherein, the employees have also put their LTIs, excepting in one or two cases, in the presence of the said Paul Babu and he also signed in their presence. It should be noted that only in the cases of WWs. 174, 181, 188, 198, 202, 206, 207, and 212, the employees concerned could say that they can testify the signatures of Paul Babu and out of the above employees only WW-202 produced his permit slip (4) the employees have uniformly stated in their affidavits that they were given work for 4 months in 1978 and they had worked in 1975 under Direct Payment System and such employment was provided to them, as they had worked in 1975, (5) the said Corporation had issued permit cards excepting in the cases of WWs. 165 to 179, 181, 182, 184 and 186, which were also known as Identity cards and they have produced certificates of employment from one, Dharendra Kumar Banerjee, Ex. Depot, in-charge, Foreman, F.C.I. and (6) they were really concerned workmen within 464 employees, whose cases are pending now and above being the position, they have prayed for an order in their favour in the matter of identification, in terms of the observations of the Hon'ble Supreme Court of India and consequently, they be paid the benefits in terms of the said order. It should also be noted that apart from the uniform format of the affidavits, the employees have also claimed to be illiterate.

118. Now, I shall try and scan the evidence of WW-164 (W-1109) to WW-218 first and it should be noted that my findings in respect of the resemblances or otherwise of their identities, are indicated at the back of each affidavit.

119. WW-164 has stated to be working in the said Corpn. since 1972. It was his evidence that initially, he worked upto 1975 and during his workings from 1972 to 1975, he got the permit slip signed by Paul Sahib. He has also stated to have affixed his LTI before the said Paul Sahib and has also deposed that the said Paul Sahib signed the concerned slip in his presence. He has of course stated that he has lost the permit slip. His further evidence was that, after 1975, for 4 months in 1978, he again worked for the said Corporation and received the Identity card, bearing his photo, from Dutta Babu (WW-2), and the same contained his LTI and so also the signature of Dutta Babu. In fact, the Identity card was the only evidencelocument in support of his workings in 1978, even though he has stated to have worked in the said Corporation in 1972. The date of the identity card was 14th April 1978, which date was neither disclosed in the affidavit nor in his evidence. Apart from the fact, that there was really no evidence of his subsequent workings in the said Corporation, there was also no acceptable evidence produced by the workman concerned, to support his statement that he was under the Direct Payment System of the said Corporation and he has also not been able to produce any legal evidence, establishing the fact, that because of his employment in 1975, he was, subsequently employed temporarily for 4

months in 1978. He could neither mention the months for which he had worked in 1978 nor he could also produce any evidence of his termination either in 1975 or in 1978. Even though, he has stated that a copy of the permit slip, which he has lost, was lying with F.C.I., yet he has admitted that he never asked for a copy of the same from the said Corporation and he could not also give the particulars of the person or official from whom, such demand, if any, was made and strangely enough, the fact of such demand or any refusal to supply the conv. has not been mentioned in the affidavit. The statement of the employee concerned that Paul Babu gave him the permit slip, containing the signature, has not been proved, as the signature of the said Paul Babu on the permit slip was neither produced by him nor he could say that he could identify the signature, if shown. The evidence of the witness regarding his age was patently based on assumptions and without any corroborating evidence. His statement regarding his father's name and age was far from being convincing and similar was the position regarding his residence.

120. The witness has stated that on his photo in the identity card, there is a Seal of the said Corporation, but that seal appeared to be illegible and the same was very difficult to be identified as the seal of the said Corporation, if tested with the evidence of WW-1. The witness has of course stated that the seal was affixed in his presence. It should be noted further, none of the Union subscription receipts as produced, were of the relevant period and in this case, the name of the workman concerned and his father's name in the identity card also differed. On comparison, I found that there was no resemblance of the workman concerned with his photograph in the identity card. He has not also produced and proved duly, the Ration Card or the certificate of the Municipality. Admittedly, the xerox copy of the Ration Card, which also tallied with the Ration Card as produced by the employee, was a duplicate one and the same had neither any LTI nor any signature of the workman concerned. He could not also establish that this duplicate copy was received by him in lieu of his earlier card, as claimed. The photograph on the identity card also contained no signature of any official of the said Corporation and in the said card, the name of the employee and that of his father was written in different ink. There was also no convincing evidence that the employee concerned was one within the 464 employees as involved in this proceeding on the basis of the evidence, which did not appropriately tally with the statements as made in the affidavit and considering them in the light of the evidence of WW-1, 2, and 4 no verdict can be returned in favour of the workman in terms of the Order of the Hon'ble Supreme Court of India (hereinafter referred to as the said under).

121. It will appear from the evidence of WW-165 (W-1101) that he worked with FCI since 1960 and in 1975, he was first terminated thereafter, because of his working in 1975, he worked for 4 months in 1978, which statements in the affidavit, were not duly corroborated by the employee concerned, with any legal evidence. He has stated that during his workings in 1975, a permit slip was given to him by Paul Babu, where he affixed his LTI in his presence and the said Paul Babu also signed in his presence. Similar, to the other witnesses, this witness has stated that he has lost the permit slip. It was his evidence that he received the identity card in 1978 from Dutta Babu, where he has affixed his LTI in his presence and Dutta Babu also signed in his presence. His identity card was also issued on April 14, 1978 and it contained, according to him, a seal of the said Corporation, where of course, there is no signature of any FCI official. This seal, even on the basis of evidence of WW-1 cannot be regarded or considered to be the seal of the said Corporation. The employee concerned could not give the particulars about his termination in 1975 and in 1978 and there was no evidence, that he was given 4 months work in 1978, because of his workings in 1975. Regarding his age and his evidence regarding his father's name, he spoke nothing new than the earlier witnesses. Regarding his residence, he stated that he was staying on Railway lands, without any permission from Railway authorities. It may be mentioned, like the evidence of all other witness, this witness has also said that he is staying in a Shanty on Railway land. In the Ration card, the Head of the family was mentioned as R. Mahato, but there was no evidence that the said Shri Mahato was really the Head of the family. He has produced certificate from Bejoy Babu, who is not the Commissioner of his Ward. He

could not say about the contents of the Ration card and there was no evidence of the same, having contained his LTI or signature. The other characteristics of the Ration Card and his evidence on the same were the same like WW-164. He could not speak or testify about the contents of the Identity Card, which he has claimed to be issued by Dutta Babu, he could not say where Dutta Babu has signed, even though he claimed that he signed in his presence. On comparing the photograph in his identity card and the employee, it appeared that there is some resemblance. The findings on the evidence will be just the same as WW-164.

122. WW-166 (W-1/59) has not really stated anything new other than the witness as mentioned above. Although he has stated about his employment in 1970 under Direct Payment System of the said Corporation, he could not in fact, establish such workings. He could not also establish that he was one of the 464 employees involved in this proceedings or that in 1975, there was a strike for one month in the said Corporation and thereafter, he received the Permit slip from Paul Babu, after affixing his LTI on the same in the presence of the said Paul Babu, who also signed the permit slip in his presence. Like others, he has stated that he has lost the permit slip, but there was no cogent evidence for such loss. He has not been able to establish that because of his workings under Direct Payment System, in 1975, he got temporary employment for 4 months under the Corporation in 1978. It was his evidence that he received the identity card from Dutta Babu and there is a seal of the said Corpn. on his photograph in the Identity card, apart from the fact, that the said card contains his LTI. The character of the seal, I feel, that on consideration of the evidence of WW-1, cannot be treated or considered to be the seal of the said Corporation. It was his evidence that even though Dutta Babu signed the said card in his presence, it will not be possible for him to show his signature in the Identity card. This card was also issued on April 14, 1978. On comparison of the photograph as available of the employee in the Identity Card and the workman concerned, it appeared to me that there is some resemblance in the appearance. As usual, the duplicate copy of the Ration Card bore neither any LTI nor the signature of the employee concerned and the drawings as mentioned or shown in the back side of the ration card, were not under the signature of the Ration Shop area. The certificate as produced, was obtained in July 1991, but in my view, the same was not enough to establish that the employee concerned is a permanent resident of Siliguri. One of the Union receipts as produced, of course was of the relevant period, but the workman was ignorant of the contents of the receipts. Save as aforesaid, the other evidence of the witness, on other points for establishing his identity of the relevant time, was no better than the evidence of the witnesses as recorded earlier, in respect of age, father's name, residence and the Identity Card. My findings on the evidence will just be the same as made in respect of WW-164.

123. WW-167 (W-1/159) has tendered himself for examination and cross-examination and it appeared from his evidence that regarding his age, father's name, residence, certificate from the Municipality and ration card, he, in fact said nothing new than that of other witnesses.

124. It was his evidence that he received the identity card from J. N. Banerjee (since deceased), which contained his photograph, under the stamp of the Assistant Manager of the said Corporation. Over the stamp, there is no signature of any official of the said Corporation. It was his evidence that he affixed his LTI in the presence of the said Shri Banerjee (since deceased) and he also signed the same in his presence. The signature of the said Shri Banerjee is absolutely illegible and this identity card was issued on May, 1978. The witness has not at all affirmed paragraph 9 of the affidavit and considering his affidavit along with his recorded evidence, it appeared that his statements were full of wrong/false statements. On comparison of the photograph of the witness in the Identity Card with him, it was found that there was no resemblance.

125. The evidence of WW-168 (W-1/171) was no better than the evidence of the witnesses as recorded earlier and more particularly, that of WW-167, in respect of age, father's name, residence and certificate of Municipal Commissioner. His ration card as produced, had the same defects like WW-164 and WW-165, and here also the Head of Family was mentioned as R. Mahato, but there was no convincing evidence

about that fact. He has stated to have received the identity card from Sri J. N. Banerjee (since deceased) and on the photograph in the identity card, there was no seal of the said Corporation, but there was a stamp under the signature of said Sri Banerjee. The witness has stated that he has affixed the LTI on the identity card in the presence of the said Sri Banerjee, who also put his signature in his presence, but he was not in a position to identify and find out the said signature of said Sri Banerjee. On consideration of his evidence, it appeared that the same was not only false, but the evidence as lead, was inconsistent with the pleadings and on comparison with photograph of the employee as available, it appeared that there was no resemblance. The evidence, on consideration, cannot get a verdict other than those of WW-164.

126. Workman WW-169 (W-1/172) as stated to have worked in the said Corporation since 1970 to 1975 and then in 1978, but he could not remember the months for which he worked in 1978, although his affidavit was that he worked for 4 months in that year. He has stated, the permit slip was issued to him by Paul Sahib, in whose presence he has affixed his LTI and the said Paul Sahib also signed the permit slip in his presence. He has of course stated that he has lost the permit slip. It was his further case that his LTI was affixed in the Identity card, which was given to him by Banerjee Sahib and he is illiterate. He could not of course say what were written in the Ration card as produced or when the same was received by him. Incidentally, the ration card, like others, is also a xerox copy of the duplicate ration card. He has not been able to say anything to give any particulars, as to when he received the previous ration card and regarding his age, whatever he said, was merely on assumptions. He could not also say when he drew his ration last, on the basis of the ration card. He was not in a position to say what were the contents of the Commissioner's certificate, but admittedly, he obtained the same from Bejoy Babu, the Commissioner of Ward No. 29. He has definitely stated that his father's name was written in the Commissioner's certificate, after hearing from him. He could not also prove his age and the whereabouts of his father or that when he died. He could not testify as to what were written in the Union receipts and the receipts produced by him, were not admittedly of the relevant period. He could not give any convincing statement about the Union receipts he had lost and could not also produce any other evidence that he was the member of the said Union. His evidence regarding the residence was that, from 1970 to 1978, he was staying at Khalpara, but he could not produce any convincing evidence of document that he was really staying at Khalpara. He has stated to have living in a shanty constructed on the Railway land without any permission. He has not produced any evidence to establish that he worked for the said Corporation since 1970, although his statement in the affidavit, was otherwise. No supporting document for such work was produced by the witness. He was also not in a position to say definitely what was a "Payment Sheet", although he alleged that on subscribing his LTI on such sheet, he got his payment. He has also not been able to say definitely, as to on what dates his services were terminated from FCI either in 1975 or in 1978. The date of issue of the Identity card was May 5, 1978. Although he has stated that the identity card was issued to him by Banerjee Sahib, but he asserted that he will not be able to recognise his signature. It was his evidence that the Identity card contained his photograph and LTI. He has definitely stated that it will not be possible for him to identify the signature of Paul Babu on the permit slip, if the same was shown to him and he had no evidence to show that the Identity card which was produced by the said Union, was handed over to them by him. In the Identity card, his address at Siliguri has not been mentioned, although he was staying there in 1978 and the same was said to have been received by him in 1978. On comparison of the photograph in the Identity card and the appearance of the employee concerned, it appeared to me that there has been no resemblance. On the evidence as recorded, I return a verdict as made in respect of WW-164.

127. Employee, WW170 (W-1/249) has affirmed his affidavit in the same line as that of other employees. Apart from his ration card, he has produced the ration card of his other family members, but in none of those cards, there was any LTI or signature and all of them were xerox copies of the duplicate ration cards. He has produced a certificate issued by the Upo-Prodhan of Dabgram No. 1 Gram Panchayat, for establishing his residence at Siliguri. He has

stated to have worked in the said Corporation since 1970 and was first terminated in 1975. Thereafter, he was again terminated in 1978, after working for 4 months. But, he has not been able to say the dates when such terminations took place. Although he has stated that Paul Babu of FCI gave him the permit slip in 1975 and then, the said Paul Babu, signed the said slip in his presence, he was not able to say that he has lost the permit slip and has not also asked for a copy of the same from the said Corporation. It was his evidence that the Identity card was given to him by Dutta Babu in 1978, but he had to agree that the date of issue of the permit slip, which was perhaps 14th April, 1975, has faded, although the writings above the date in the Identity card appeared to be fresh and legible. He has not in a position to show the signature of Dutta Babu in the Identity card, but he has stated that he signed the same in his presence. He claimed that there was legible signature of Dutta Babu on the photograph in the Identity card, but such signature could not be found out and he agreed that the same was not legible. His statement, that his name was within 464 employees, was on the basis of hearsay and he agreed that even though Paul Babu signed the permit slip in his presence, but, if the signature is shown, he will not be able to recognise the same. He stated that he lost the permit slip and admitted that for such loss, he has not taken any steps either with the Police authorities or with the said Corporation. His evidence regarding his age and that of his father, was on assumptions only. He could not give any convincing evidence about the death of his father. Although he stated like others, to be staying in a shanty, constructed on a Railway land, without permission, yet, he could not give any satisfactory explanation about his actual stay at Siliguri at the relevant time. The certificate as produced by him has not really and specifically established the period for which he has claimed to be staying at Siliguri and his specific evidence was that, the contents of the ration card were not known to him and there was no signature of the Ration Shop holder, against the drawings of rations as shown in the ration card of Sri Alak Das. As indicated earlier, the ration cards did neither contain any signature nor any LTI and they were xerox copies of the duplicate cards. There was no evidence as to when the original ration cards were received, in lieu whereof, the duplicates were obtained. On comparison with the appearance of the witness along with his photograph in the Identity card, I found there was no resemblance. On the evidence as recorded, my findings in respect of this workman are just the same as WW-164.

128. Workman, WW-171 (W-1/84) has also filed an affidavit containing the same statements and averments like the other employees. He has also claimed himself to be illiterate and has drawn ration on the basis of the xerox copy of the duplicate ration card, as submitted. He had to admit that in the Ration card there was no LTI by him and he was astonished to find that the name of the house owner in the card has been mentioned as C. Sahani, meaning, thereby, Chandra Shekhar Sahani and he admitted that the jhupri, while he has constructed on Railway Land, without the permission of the Railways, do not belong to the said Chandra Shekhar Sahani, although the name of his brother was Satrugna Sahani. He has produced Union subscription receipts, only one of which, was of the relevant period. He has produced a certificate from Bejoy Babu, Commissioner of Siliguri Municipality and even though Subhaspally i.e. where he is staying, is within Ward No. XVIII, the certificate was given by the said Bejoy Babu, who was a Commissioner from Ward No. XXIX. He was not in a position to say what were the contents of the said certificate or what were also the contents of the ration card as produced. He has stated that the permit slip was received by him in 1975 from Paul Babu and there, he affixed his LTI in his presence and the said Paul Babu also signed the same in his presence. He has stated that he has lost the said slip and has not been able to say, when, in 1975 or 1978, his services were terminated by the said Corporation. He was not aware of the full name of Paul Babu and he stated that even if his signature was shown to him, he would not be able to identify the same. In fact, his evidence was that it will not be possible for him to say whether the word permit slip was mentioned on the document he signed and he was also not in a position to say when he got the said permit slip. Although he has said to have lost the said slip, he has neither asked for a copy of the same from the Corporation or has taken any steps for such loss. He could not also say whether anything

was written at the back of the permit slip. Regarding his age, the statements made by him were full of discrepancies and they were really based on assumptions or such informations, which he received from his illiterate mother and that too, given to him by her, on guess. He has stated that his father died in 1978, but could not produce any document to establish the fact of such death. Although he stated, from 1970 to 1978, he was staying at Subhaspally at Siliguri, he could not produce any document to establish such fact or the fact that he was paying any tax for the shanty, where he was staying, on Railway land. He has said that Bejoy Babu, the Commissioner knew the fact of such stay, but unfortunately in his certificate nothing is mentioned. In his ration card, as produced, admittedly, there was no mark of his LTI and there was no evidence that he got the said duplicate Ration Card, on surrender of his earlier card and he had to admit that there was no statement of the Ration Shop Owner, against the drawings. The Identity card in this case was issued on April 14, 1978 and as stated, by Dutta Babu, but in his evidence, he has stated that it will not be possible for him to identify the signature of Dutta Babu. Although it was stated that there was a seal of the FCI on the photograph, but such seal which is of an oval shape, has faded and testing with the evidence of WW-1, the said oval shaped seal, cannot be considered to be the seal of FCI. His statement regarding inclusion of his name within the 464 employees was also based on hearsay and he could not say when in 1975, the strike as stated by him, started. He has not also disclosed any evidence of his work in the said Corporation since 1970 or from 1972 to 1975. He could not also give any particulars of those 4 months, for which he has claimed to have worked in 1978 and he could not also give the date, when he was terminated and there was no evidence that since he worked in 1975, he was given work in 1978. On comparison of the appearance of the witness along with his photograph as available in the Identity card, I find there is little resemblance. On the evidence as available, I return the same verdict as made in respect of WW-164.

129. The employee WW-172 (W-1/90) has filed his affidavit in the same line as that of others. The Ration card as produced with the affidavit, was a xerox copy of the duplicate Ration card which was said to have been received by him. The said card do not contain his LTI and the drawings of ration, as shown at the back of the Ration card, were not countersigned by the Ration Shop Owner. That apart, drawings in respect of 9-11-91, 16-11-91, 23-11-91 and 11-12-91 were admittedly shown twice. He could not also say about the contents of the Ration card and there was no evidence that he received the duplicate copy of the same, on surrender of the earlier card. The certificate in the instant case was issued by Bejoy Babu and the same, in my view, was far from being satisfactory, to establish that during the relevant time and period, the employee was staying at Siliguri. The subscription receipts as produced by him were admittedly not of the relevant period and although his evidence was that he has lost other receipts, but he could not produce any supporting evidence to establish such loss. It was his case that from 1970 to 1975, he worked for FCI and in 1975, he received a permit slip from Paul Babu, whose name was not known to him. The permit slip of course, he has stated to have been signed by Paul Babu in his presence and he subscribed his LTI in the presence of Paul Babu. He has stated that he has lost the permit slip 4 years ago, but has not been able to establish that he took any steps against such loss. He agreed that even though he has alleged that Paul Babu signed in his presence, he will not be able to identify his signature, if shown and he added subsequently, that I do not remember that the permit slip was given to me or what were written in that slip. It was his case that his father's name was Srilal Sahani and not Shihal Sahani, as shown in the Identity card, which was received by him from Dutta Babu in 1978. He has said that he will not be able to identify the signature of Dutta Babu in the Identity card. The card was issued on April 14, 1978 and the same was produced before this Tribunal by the said Union, but the witness could not produce any evidence to the effect that the same was handed over by him to the said Union. Regarding his age, the evidence was purely on assumptions and the certificate in question, will not establish his residence at Siliguri at the relevant time and he could not produce any further convincing evidence for such stay at Siliguri. He has also stated to be staying on Railway land without any permission. Even though he alleged, yet, he could not produce



any evidence to establish that he worked under the Direct Payment System of the said Corporation and he agreed that apart from the Identity card, he has not disclosed any document, showing that he worked for 4 months in 1978. In fact, there is not evidence to the effect that because he worked in 1975, he was given employment in 1978 and there was also no evidence of termination of his services either in 1975 or in 1978. His evidence that his name was included within the 464 employees, was also based on hearsay. He could not say definitely what was written in the permit slip nor could he give any convincing evidence about the payment sheet. On comparison of the appearance of the employee and the photograph as disclosed, it appeared to me that there was little resemblance. Even then, on the basis of the evidence, which did not appropriately establish by the statements in the affidavit, I think that no case has really been made out, to return a verdict in his favour on the points as involved.

130. Workman WW-173 (W-138) has also filed the same type of affidavit like others and the xerox copy of the duplicate Ration cards as produced, were without any LTI or signatures and the back portion of all the cards, excepting one, were blank and against the drawings also, there were no signature of the Ration Shop Owner. The said Bijoy Babu issued a certificate, testifying the residential qualification of the workman, but on going through the same, it is very difficult to hold that the employee concerned was staying at Siliguri at the relevant time. In fact, Bijoy Babu has not given the particulars of the residence of the employee concerned or the whereabouts of his residence and more particularly when, the employee himself has admitted that he possessed no evidence to show that from 1970 to 1978, he was at Siliguri and there was no document with him to show that he was staying at Sraban Nagar, Siliguri. The permit slip, the employee has claimed to have received in 1975 from Paul Babu, but he could not say whether the same contained the signature of Paul Babu. He of course stated that if asked and necessary, he can produce that slip after necessary search. Although alleged, the employee has not been able to establish that his services were terminated either in 1975 or 1978 and because of his workings in 1975, he got employment for 4 months in 1978. It was his evidence that he lost the Ration card, for which he got the duplicate but no General Diary was lodged by him for such loss, with the Police Station and he was not in a position to give any particulars of the diary. Although he was a resident of Ward No. XX, but Bijoy Babu, the Commissioner of Ward No. XXIX issued the certificate in his favour. He was not in a position to say when the said certificate was issued. His evidence that his name was within the 464 employees, was based on hearsay. The evidence of this witness regarding his age was really on assumptions and he could not also say when his father died, apart from the above, he could not produce any evidence showing that from 1970 to 1978, he was staying at Siliguri or that he worked on the Direct Payment System of the said Corporation. He has said about receiving payment on affiliation of LTI on payment sheet. But, he could not give further and better particulars of such receipts. Although alleged, he has not been able to say, on which date in 1975, the strike in the said Corporation started and how long the same continued. His evidence of working with the said Corporation in 1978, was the Identity card only, but he said that he will not be able to identify where Dutta Babu has signed in the Identity card, even though the same was given to him by the said Dutta Babu. The card was issued on April 14, 1978 and the same contained the oval shared seal of FCI on the photograph, without the signature of Dutta Babu and because of the evidence of WW-1, it is very difficult to hold that the said seal was of FCI. On consideration of the evidence, it appeared to me that the evidence of this witness was not correct, rather the same was false to some extent and on comparison of his appearance with the photograph in the Identity card, it revealed that there was no resemblance. Thus, in view of the discrepant evidence as adduced against the statement in his affidavit and the evidence of WW-1, I feel that no reliance can be placed on both the oral and documentary evidence, to hold in favour of the workman that he has satisfied necessary test for a verdict in terms of the order of the Hon'ble Supreme Court of India.

131. Workman WW-174 (W-133) has filed the same type of affidavit like the other employees, whose particulars

have been mentioned earlier. In his evidence, he stated that he has drawn ration on the basis of the Ration card, the xerox copy whereof was annexed to the affidavit. The original of the ration card, which was found to be a duplicate copy, was also produced. To establish his residence at Siliguri, he produced a certificate from Shanti Chakraborty, a Commissioner of the Municipality and for establishing his connection with the said Union, he has produced 5 Union subscription receipts. He claimed himself to be an illiterate person and it was his evidence that he entered the services of the said Corporation in 1968 and was terminated on the 7th month of 1975. He has further stated that while working in 1975, he received a permit slip which contained his LTI, as affixed in the presence of Paul Babu and has also stated that the said Paul Babu also signed the said slip, which he has lost, in his presence. It was his further evidence that he worked in FCI for 4 months in 1978 and the photograph in the Identity card was his and so also the LTI therein. The said Identity card has been claimed to have been given by Banerjee Babu and at that time, he has stated that Deo Prasad was present. It was his further evidence that in the affidavit has produced records to the effect that in 1986, he had his ration card and documents, not only to support such evidence, but also to support the statement that he got the present card on surrender of the earlier card, has been claimed to be disclosed. This evidence appeared to be incorrect. He could not of course say what were the contents of the Ration card or when he got the same. He agreed that the Ration card did not contain his LTI and he was not in a position to say, since when, he was drawing ration on that card or when he last drew ration. He was not in a position to say whether the entries of drawings in the Ration card, were countersigned by the Ration Shop Owner. He admitted that his age in the Ration card was mentioned as 41. Regarding the certificate of the Commissioner as produced, he agreed that the same was asked for by him, as a proof and the Commissioner concerned, wrote the name of his father and other particulars after hearing from him. Admittedly, this certificate was obtained 2 years ago and he was not in a position to give the residential particulars of the Commissioner. He could not say the year, for which he produced the Union subscription receipts or say anything about the contents of them. He was candid enough to admit that he did not remember what subscriptions he paid in 1980 or in 1977. Of course, he has stated to have paid Rs. 12 for 1990. Although he claimed to have lost other receipts, he could not say, the years for which such loss occurred and he could not produce any document to show, of any steps taken by him, for the said lost receipts and stated, apart from those lost receipts and those he has produced, he had no other document to show that he was a member of the said Union, since inception. His evidence regarding his age was purely on assumptions and he was not in a position to remember the date and year when his father died and could not produce any document to prove the fact of such death. He could not also produce any evidence to establish that his age was 46 as declared in the affidavit.

132. He has stated that he could not say about the contents of the Identity card, but in 1978, he was staying at Subhaspally, Siliguri. In the Identity card, his address as given is a different one. Although it was his specific case that Banerjee Babu signed the Identity card in his presence, but he stated that he will not be able to recognise his signature, if shown. It was his evidence that the photograph in the Identity card was his, but he could not say when the card was received by him and he did not know his permit number. The Identity card was produced before this Tribunal by the said Union, but the workman concerned could not establish satisfactorily that he handedover the said card to the Union. Although it was stated by him, from 1968 to 1979, he was staying at Subhaspally, but he could not produce any document to establish such fact satisfactorily. It was his specific case in evidence that he was staying in a shanty constructed on Railway land, but he admitted that such statement has not been incorporated in the affidavit.

133. He could not produce any document to establish his workings in FCI from 1968 to 1975 as claimed and he was also not in a position to say, whether the words "Payment sheet" were written on the paper, whereon affixing the LTI, he used to draw his payments. It was his evidence that he was to put such LTI and to receive payments, on being asked by the Babus, whose names he could not disclose,

His statement that his name was within the 464 employees were based on hearsay and he could not mention the months or the date, when in 1978, he worked for FCI or when he was terminated. He has not also produced any evidence documentary or otherwise that either he worked in FCI since 1975 or for 4 months in 1978, including the dates when his services were terminated either in 1975 or in 1978. He did not also disclose any document with the affidavit, establishing the fact that in 1975, there was a strike in FCI or when such strike started and how long the same continued. He could not mention the date when in 1975, the permit slip was received by him or say, what were the contents of the same. He has of course stated that he can testify the signature of Paul Babu, if shown, and in fact, he stated the signature on Exhibit M-6 as the signature of Paul Babu. It was his evidence that for such loss of permit slip, he did not lodge any Diary with the Police Station or asked for a copy of such slip from FCI. It was not possible for him to state the full name of Paul Babu, but he stated that his office was at College Para. On comparison of the appearance of the workman concerned with his photograph in the Identity card, it appeared that there was no resemblance. Eventhough, I find that this witness has succeeded in identifying the signature of Paul Babu in Ext. M-6, I feel that he has not succeeded in duly establishing his case as sought to be made out in his affidavit or has been able to prove convincingly, the tests as required, in terms of the Hon'ble Supreme Court's order, for an order in his favour.

134. The affidavit of the workman No. WW-175 (W-1/124) was patently in terms of the affidavits of the other employees, which have been dealt with earlier. He could not establish his employment in FCI from 1970 to 1975 or could say on which date either in 1975 or in 1978, he was terminated. He could not also establish in his evidence that because he worked in 1975, he got his employment in 1978. He of course stated that for 4 months in 1978, he was employed in FCI, but was not in a position to mention the months for which he was so employed.

135. His evidence in respect of his age was not definite or specific, but whatever he deposed, was on mere assumption. Although it was his evidence that the ration card, without either his signature or LTI as produced, was the duplicate received in 1990, but he could not establish that such duplicate was received by him against his ration card of 1986. He could not also establish his statement that because of the damaged condition of his earlier ration card, he deposited the same with the Rationing Authorities. He has produced a certificate from Shri Bijoy De, the Commissioner of Siliguri Municipality. But, could not say what were written there, excepting the fact that the same contained his name, his father's name and address. The said Bijoy De, was a Commissioner of Ward No. 29, but the workman was the resident of Ward No. 20. On being asked, he could not answer the years for which he has produced the union subscription receipts. None of them were of course of the relevant period. Like other employees, he has stated that apart from those receipts, he has lost all the receipts and there was nothing else to show that he was a member of the said union since 1972. It was his admitted case that he stated about the inclusion of his name in the list of 464 employees, on informations received from his union and such fact, he has said to have been stated in his affidavit, which was of course not true. His statement that he asked for the appropriate records to establish his claim that he worked in the said Corporation from 1970 to 1975, was not supported by any legal evidence and on being asked, he admitted that he does not remember exactly, how many years back from 1978, the year 1975 will be. It was his claim, that he received payment on affixing his LTI on Payment Sheets and he considered those sheets as such, on being told by the Babus, whose names he could not give. He has stated about the strike occurring in 1975, but strangely enough, he could not remember the date when the same was started or when the same was lifted. Even though he has said to have received the permit slip from Paul Babu, yet like others, he has said to have lost the same and no information of such loss has been lodged to the Police Station, apart from the fact, he could not remember whether he asked for the copy of the payment sheet from the said Corporation, even though his case was that such copy was lying with them. It was his

specific case that he has no evidence to show that his identity card, which was produced by the said Union, was handed over to them by him and he could not also say what were the contents of that card. On comparison of the workman concerned with the available photograph in the Identity card, it appeared that there was some resemblance. He has not said anything on the question of identification of the signature of Paul Babu in the permit slip, as stated by him. On consideration of the evidence as tendered along with statements of W-1, 2 and 4, it appeared to be very difficult to rely on the Identity card as produced or to hold that the workman concerned, has been able to establish his case in respect of his residence and identity, as claimed. On the whole, it appeared that his evidence was not trust-worthy, rather the same was false. It would further appear from the entries at the back side of the ration card as produced that there were two entries on January 20, 1991 and such entries, could not be appropriately explained by the workman concerned. The certificate of Bijoy De has not also appropriately established the residential qualification of the workman for the relevant period and there was no appropriate seal of the said Corporation in the Identity card.

136. The workman WW-1/176 (W-1/137) has filed the same type of affidavit. On consideration of his recorded evidence, it appeared that he was ignorant about his age in 1978 and he could not say what was his age in 1985. He could not also establish with any legal evidence, his age as declared and it was his evidence that although the cremation of his father was performed at a burning ghat within Siliguri Municipality, his death certificate was not taken from any Doctor and without such certificate, the cremation was allowed to be performed. This was not only strange, and to my mind, nobody can in these days, rely on them and mere particularly when, he has stated that the death of his father was not recorded in the Municipality. He could not give due legal evidence to establish about his stay at Srahan Nagar, Siliguri from 1970 to 1979. He admitted to have received the ration card as produced in 1990 and the same neither contained his LTI nor his signature and he could not say, what were the contents of that card and stated further, that it was not possible for him to say whether the entries at the back of the ration card were countersigned by the owner of the ration shop, apart from testifying that he had nothing to show that he got the ration card by depositing the 1986 ration card and he had also no evidence to establish that in 1986, he had ration card.

137. Although he has stated that the certificate Shanti Chakraborty, Commissioner of the Municipality knew him and he also knows the said Shri Chakraborty, he could not give other relevant particulars of the said Shri Chakraborty. He has stated, he met Shanti Babu and told him that he required the certificate as produced, to prove his residence at Siliguri and it appeared that Shanti Babu, even though, was claimed to be knowing him, incorporated, the name of his father and other particulars in the certificate, after hearing from him and the contents of the certificate were not known to the workman concerned. The workman has produced five Union subscription receipts, one of them was, perhaps of the relevant period and has stated like others, that he has lost the other receipts, but on being asked, he could not establish that any steps were taken by him for those lost receipts and he had to admit that apart from the receipts which he has produced and those which he has lost, there was no other document to show that he was a member of the said Union since inception. He has also not produced evidence to show that he worked under the said Corporation from 1970, although he claimed the same and he was also not in a position to establish that in 1973, he worked under the Direct Payment system. It was his evidence that he considered the sheets, where on affixation of his LTI he need to receive payment, after learning their character from the Babu and as such, he has claimed them to be payment sheets and even though it was his case that copies of them were lying with the said Corporation, yet he has not asked for those copies from them. He could not also establish the date when he started to work under the said Corporation or when he was terminated in 1978, even though it was his claim that he worked for four months in 1978. He could not produce any document to establish



such workings and there was no evidence to establish his claim. He disclosed in the affidavit that he was given work in 1978, for his workings in 1975 and he had to admit there was no document to establish his statement that he was terminated on July 21, 1975. He could not also establish his termination in 1978. The workman was candid enough to admit that he was not aware of his serial number in the list of 464 employees as involved in this case and the statement regarding the inclusion of his name within the list of 464 employees, were based on hearing from the Union. Even though the workman has stated to have received the permit slip from Paul Babu, which like all others, he has said to have lost, he could not give full name of Paul Babu and has not asked for a copy of the same from the said Corporation, although the said copy was stated to be lying with them. He could not give the number of his permit slip and naturally, the said slip was not produced. It was his case that he received the Identity card from Dutta Babu, but was not aware of his full name and was not in a position to say about the contents of the Identity card. From the Identity card as produced, it would appear that the same was given to the workman concerned on April 14, 1978 and he had admitted that he had no document to show that he had handed over the said card to the Union, for production, which they did. On a comparison of the appearance of the workman along with his photograph in the Identity card, it would appear that there has been no resemblance and on the basis of his recorded evidence, it also appeared that they were inconsistent with the statements as contained in his affidavit, on material particulars. The certificate of the Commissioner as produced has not also proved or established the fact of his residence at the material time. There was no signature of any FCI official on the photograph in the Identity card and the seal appeared to be different in terms of the evidence of WW-1 and WW-3.

138. The affidavit of WW-177 (W-1/173) contained no better statements or particulars than the affidavits of other employees. In this case, the Identity card was produced without any photograph and to establish his identity, the workman has produced a photograph along with the certificate dated June 20, 1990, obtained from Shri Dhiren Kumar Banerjee, Ex-Depot, in-charge of NIP GPD, of the said Corporation. It appeared that the said Shri Banerjee, who has admittedly retired, has certified that the workman concerned was remembered to have been working under him till 1975, as a labourer, while he was acting as such Depot, in-charge. The certificate as obtained was only on a plain sheet of paper and not on any form of the said Corporation and on comparison of the workman with his photograph as produced, it appeared that there was no resemblance. The workman has admitted that on asking, he has obtained the certificate from Dhiren Babu, for the purpose of his identity, as he has lost his photograph in the Identity Card, but he could not say whether he has mentioned the above fact in his affidavit and had to admit that the photograph as disclosed was snapped one and half year ago, which according to me should mean one and half year ago from the date of his deposition. Even after such statements as recorded, the workman has stated that he has not procured the certificate for the purpose of this case. This in my view, was certainly a contradictory statement. His evidence was that the photograph in the Identity Card was taken out by his child, when he went to Bihar on a holiday and although claimed, he has not been able to produce any evidence of his workings with the said Corporation from 1970 to 1975. His statements regarding the drawing of pay on affixing his LTI on the payment sheet, were very difficult to be accepted. He had to admit that he could not remember whether the said Corporation was informed about his termination on July 21, 1975 and although he received the permit slip from Paul Babu, he has not deposited the same before this Tribunal and like others, he has stated to have lost the same and such fact, has neither been intimated to the said Corporation nor he has asked for a copy of the same from them. He had no record to establish his workings for four months under the said Corporation in 1978. He has stated and that too strongly, that he has received one copy of the Identity card and the other copy was lying with the said Corporation. He had to admit that he has produced the photograph with the certificate of Dhiren Babu, on the asking by the said Union. It was his evidence that the ration card was received by him in 1991 on deposit

of his 1986 card, but could not establish about the existence of the 1986 card. His evidence regarding his age and his father's age was based only on assumption and without any legal evidence and he could not say what were the contents of the certificate obtained by him from the Commissioner of the Municipality, but he claimed that the contents therein were not false and he admitted that he also obtained such certificate, on the asking by the Union, for establishing his identity. He has produced six Union subscription receipts, one 'or' which was of the relevant period and it was his evidence that on becoming a member, a member gets a card, but he has not got that card. It is also strange that even though the photograph in the Identity card was lost, no information for the same was lodged either in the Police Station or with any authority. The recorded evidence appeared to be discrepant from his statements in the affidavit and it was really difficult to return a verdict in favour of the workman concerned, in terms of the directions of the Hon'ble Supreme Court, with regard to the identity and residence of the employee concerned and also his workings. Although the workman has said in his affidavit about obtaining the permit slip in 1975 from Paul Babu, but like others, he has also said to have lost the same and he has not, like many of the other employees, deposited his permit slip before this Tribunal. One of the subscription receipts as produced was of the relevant period and like others, he has also claimed to have lost all the other receipts, excepting those as produced. On comparison of the appearance of the workman concerned with his photograph as available, I find no resemblance and on consideration of his statements in the affidavit, deposition and the depositions of WW-1, 3 and 4, it is really difficult to hold in his favour in respect of his residence at Siliguri or his workings with the said Corporation.

139. WW-178 (W-1/99) has filed similar affidavit like others and it was his case that he was working in the said Corporation since 1970 and on the 21st of the 7th month of 1975, he was terminated. He of course had no idea about the name of the 7th month and he could not establish by legal evidence, his termination either in 1975 or in 1978, by the said Corporation. It was his evidence that he got a permit slip from Paul Babu in 1975, but as usual like others, he has lost the same. It was also stated by him that he affixed his LTI on the said slip in the presence of Paul Babu and Paul Babu signed the same in his presence. The contents of the permit slip were not known to him or he could not say about those contents. He could not also say that how many years ago he received the permit slip. As usual, the permit slip was neither produced nor available. He has stated about his Identity card as received in 1978 from Dutta Babu, which contained his signature. In fact, he claimed that to be the only evidence about his service with the said Corporation in 1978 and he could not also produce any evidence of his workings with them from 1970 to 1975. He could not establish the four months for which he worked with the said Corporation in 1978. For the loss of his permit slip, he has not lodged any information with the Police and although he claimed the same to be lying with the said Corporation, he has not asked for a copy of the same. He has stated the number of the Identity card as 251, on hearing from Babus, whose names he could not disclose. Although he claimed that Deo Prosad had signed his Identity card, he was not able to say that it will not be possible for him to identify his signature. The statement that his name was within the list of 464 employees concerned was also based on hearsay. He was staying in a Jhupri and could not establish any other evidence of such stay. His Ration card do not contain his LTI and he has no specific evidence as to who signed the same. The back side of the Ration card showed certain entries without any signature of the Ration Shop Owner. Although it was stated that he got the present Ration Card in 1990, on deposit of 1986 Ration card, he could not establish that he had such card in 1986. One of the 3 Union subscription receipts as produced, was of the relevant period and his statement was that he has lost all other receipts, excepting those which were produced and he had no other evidence to establish that he was a member of the said Union. He could not testify, as to who signed the Union receipts as produced. On comparison of the appearance of the workman with the photograph in the Identity card, there appeared to be close resemblance. Even then, I feel that testing the statements as made in the affidavit with the deposition as recorded, there were discrepancies, which could not be reconciled and if the statements in the affidavit and the deposition as recorded are considered along with the evidence of WW-1, 3 and 4, it

cannot be deduced that the workman has established either his residence at Siliguri at the relevant time or his earlier employment with the said Corporation. The age of the witness was really made on assumption.

140. The affidavit of WW-179 (W-1/180), was no better than the affidavit of the other employees. It was his evidence that since 1968, he was working with the said Corporation and on 21st day of the 7th month of 1975, his services were terminated. He was ignorant about the name of the 7th month and so also, not only of said dates, but the dates regarding his age and all statements regarding age, were made by him, purely on assumption. He has stated that he received a permit slip from Paul Sahib in 1975, but as usual like others, he has lost the same. He could not remember either the name of Paul Sahib or his permit slip number, but has stated that his LTI will appear in the slip. He was ignorant about the contents of the said slip and has stated that he had affixed 2 L.T.I.s., one in the copy which was with him and the other in the copy lying with the said Corporation. But, he has not asked for such copy from the said Corporation and he was not in a position to say that after the loss of the permit slip in 1978, if he has lodged any information with the Police Station. In fact, he has also not informed the said Corporation about such loss. His evidence was that the permit card was given to him by Banerjee Sahib in 1978 and the same, not only contained his photograph, but also contained his LTI. The permit card was issued on May 5, 1978, but the workman concerned said that he does not remember exactly, the date when he received the same. He stated that he could not say, who signed that card and would not be able to identify the signatures. He could not say the dates, when he was terminated either in 1975 or in 1978 or the four months for which he was employed in the said Corporation in 1978. He was not in a position to establish his workings with the said Corporation from 1968 to 1975, but claimed that those documents were lying with the said Corporation. He has also said about receiving payment on affixation of LTI on payment sheets, but could not say what were the contents of those sheets and it was his evidence that he considered the sheets as payment sheets, as the Babus used to call them as such. By Babus, he meant Banerjee Sahib. He has ofcourse not asked for copies of such sheets from the said Corporation. As indicated earlier, the evidence regarding his age was on assumption. He could not also establish the date, when his father expired. To establish his residence at Siliguri from 1968 to 1978 and thereafter, apart from the ration card, he has produced a certificate from Sri Rabin Paul, a Commissioner of Siliguri Municipality and has stated that he was not aware of the contents of the said certificate or whether the said Commissioner has mentioned that he was staying at Bharat Nagar, Siliguri. He has admitted, that apart from such certificate, he has no other evidence to show his stay at Bharat Nagar. He has said to be staying in a shanty constructed by the side of the river at Bharat Nagar, but he could not produce any documentary evidence in support of the same. For his workings in 1968 to 1975 with the said Corporation, he has stated that the documents are lying with the said Corporation and to establish his workings under Direct Payment System in 1975, he has said to be receiving payment on affixation of LTI on payment sheets. He could not mention the four months, for which he has alleged to have worked in the said Corporation in 1978 and could not establish by any cogent evidence, apart from the Identity card, for such working. He could not produce any document of his termination either in 1975 or 1978 and his evidence that his name was included in the list of 464 employees, was not supported by any legal evidence, but that was his information received from the said Union. Although he has stated about the strike in 1975, but he could not say, when such strike started or when the same was called off. The two receipts as produced were not of the relevant period and his evidence was that he has lost all the other receipts and apart from the receipts which have been lost or which have been produced, he stated that there was no other evidence, to establish his membership of the said Union. The ration card as produced, admittedly was not of 1986, but the same was received in 1991 and his evidence that the drawings at the back of the ration card were under the signature of the Ration Shop Owner, was absolutely false and it is true that in the card there was no LTI of the holder. He could not establish that in 1986 he had a ration card, on deposit of which, the present card was received. He has agreed that he possessed no document to

show that in six other ration cards, his name has been shown as the Head of the family and that also included the card of his younger brother Rajgir Mahato. He was ignorant of the contents of the certificate of the Commissioner, which he received on December 2, 1981 and admitted that the name of his father in the certificate, was written by the Commissioner, after hearing from him. On comparison with the appearance of the workman with his photograph in the Identity card, there appeared to be some resemblance, but even then, on the basis of his affidavit and recorded evidence, which were discrepant and considering them with the evidence of WW-1, 3 and 4, I find it difficult to hold that the workman concerned has been able to establish either his residence at Siliguri at the relevant time or any evidence of his working with the said Corporation at the material time. Excepting the words "Assistant Manager", appearing on the photograph in the Identity card, there was no seal of the said Corporation, the particulars whereof have been mentioned by WWS 1 and 3.

141. The workman WW 180 has filed similar affidavit like others and has not produced his Identity card, but along with the certificate of Shri Shanti Chakraborty, a Commissioner of Siliguri Municipality and a certificate from Shri Dharendra Kumar Banerjee, he has affixed two of his photographs taken on different time. The certificate of the Commissioner was produced for the purpose of establishing his residence at Siliguri, but from the declaration as made, it appeared that he has not succeeded on the question, in toto. It will also appear from the certificate of Dharendra Kumar Banerjee, which was filed for the purpose of his workings with the said Corporation in 1975, that the same was far from being satisfactory. It was his evidence that he was terminated on 21st day of the 7th month in 1975. But, he could not say what was that 7th month. He has stated to have received a permit slip from Paul Babu in 1975, where he has affixed his LTI in the presence of Paul Babu, and he has also signed the slip in his presence. Like others, he could not say the full name of Paul Babu and has said to have lost the permit slip, and he could not testify when such loss occurred or whether he has informed of such loss to the said Corporation or if he has asked for a copy of the same from the said Corporation and whether he has lodged any information to the Police Station about such loss. He could not say exactly, what were the contents of the permit slip, excepting the fact not the same contained his name, his LTI and the signature of Paul Babu. His statement regarding the inclusion of his name in the list of 464 employees, was based on hearsay. He had no document or any evidence to show that he possessed a ration card in 1986, in lieu whereof, he received the present card in 1990. The ration card, admittedly do not contain his LTI or any signature of the Ration Shop Owner at the back of the ration card, most portions of which were not legible. The Commissioner's certificate was received by him in 1990, but he was ignorant of the date or could not say about the contents of the same. He could not establish with any convincing evidence, regarding the dates when the two photographs in the certificates were snapped and it was admitted by him that the Commissioner's certificate was prepared for, the purpose of this case, of his own, even though the said union asked him 5/6 years ago, that he will have to depose in this case. He could not say anything about the contents of the certificate of Dharendra Kumar Banerjee, who at the time material to the certificate, was not in the service of the said Corporation. He has admitted to have obtained the certificate for establishing that he worked in 1975, but it would appear that the statements of Shri Banerjee in the certificate were not definite or specific about such working in 1975 and admittedly, the certificate was issued by the said Shri Banerjee, after he had retired. Even though the said Shri Banerjee had retired, he has issued the certificate to the workmen concerned, without looking into any paper and his father's name was incorporated after hearing from him. The certificate of Shri Banerjee was not in any form of letter head of the said Corporation and it was appropriately doubted, if he could authorisably issue such certificate, after his retirement. The two Union subscription receipts as produced were not of the relevant period and the workman concerned was ignorant of the contents of them. If he stated to have lost the other receipts like many of the other workmen and has admitted that apart from those receipts which have been submitted, he has no other document show that he was a member of the said Union. He could not produce any document to establish his workings in 1973 to 1975 under Direct Payment System and has stated to

receiving payment an affixation of LTI on the payment sheets, when were lying with the said Corporation, but has not asked for copies or them. His evidence about his knowledge of the payment sheets was also not very convincing. He could not produce any document to establish his termination in 1975 or 1978 and his evidence regarding his age and dates, were absolutely on assumptions. Although he has stated to be staying at Siliguri from 1970 to 1975, he could not produce any convincing document about such stay. His evidence on the point was really based on the certificate of the Commissioner, which to my mind, has not established such residential qualification. On comparison of the workman with his photograph as produced, there appeared to be some resemblance, but since his evidence and statements in his affidavit were discrepant and on being tested with the evidence of WW-1, WW-3 and WW-4, I feel it difficult to hold that he was either a resident of Siliguri at the relevant time or he was employed in the said Corporation as claimed. The seal as appearing on the photograph in the Identity card, on the basis of evidence of WW-1 and WW-3 cannot be held to be the seal of the said Corporation.

142. The workman WW-180, like others has filed his affidavit in the same line. He has of course not produced his Identity card, but has annexed his photograph with a certificate of Shanti Chakraborty, Commissioner, Siliguri Municipality and Dharendra Kumar Banerjee, Ex-Depot, Incharge of the said Corporation. It was his evidence that apart from annexing two Union subscription receipts, he has produced these certificates for establishing his identity and residence and he has also produced a xerox copy of his ration card, without his signature of LTI. Although he made a statement regarding the strike in the said Corporation in 1975, but he could not say when the same was started or called off. Contrary to his statement in the affidavit, he stated, Paul Babu signed the permit slip. Like others, he has also claimed to have lost the said slip, but admittedly, he has not taken any steps for such loss either by informing the Police Station or the said Corporation and it was his specific case apart from the statement as made in respect of the permit slip, he has no other evidence to establish such facts as stated by him. His evidence was that he made statements regarding the inclusion of his name within the list of 454 employees on hearing and he could not say what was his serial number in that list. A Duplicate copy of the Ration card as produced, was of 1990 and even though he got such copy on surrender of his earlier card of 1986, he could not place any reliable evidence on that account or whether, he at all had such card in 1986. He admitted that the Ration card was without his LTI and he could not establish that the drawings of the rationed articles, were counter signed by the Ration Shop Owner. He could not give the date of the certificate of the Commissioner or say about the contents of the same and he admitted, not to remember, when the photograph was annexed to the certificate of the Commissioner, was snapped. He agreed that the Commissioner mentioned the name of his father after hearing from him and he got the certificate of his own, on being asked by the said Union 5/6 years ago, that he shall have to depose in this case. If such fact is true, it is very difficult to visualise as to why the certificate was obtained on October 18, 1990. He had no other alternative, but to admit that the certificate of Dhiren Babu was not on a paper of FCI. He got the certificate in 1990, but could not mention the date of the same and stated that such certificate was obtained by him, for establishing the fact that he worked in the said Corporation in 1975. Unfortunately, the certifier has not specifically and categorically mentioned, since when or it at all, in 1975, the workman was working in the said Corporation. He has just stated that the workman worked under him and he knew him for a long time. The workman has also admitted that the said Shri Banerjee gave him the certificate, after he had retired and in fact, in the certificate, relevant particulars and whereabouts of or particulars, have not been appropriately mentioned. It is also strange that when the workman was working under Dhiren Babu, is at all, he had not taken such certificate from him. It is a thing to be considered as to whether after his retirement from the said Corporation, the said Shri Banerjee was appropriately authorised to grant the certificate. To my mind he was not so authorised. The Union receipts as produced by him were not admittedly of the relevant period. Like other employees, this workman has also stated that he has lost

all receipts other than those produced and he has no other evidence to establish that he was a member of the said Union, since 1972. He could not also establish his workings in the said Corporation in 1970 or from 1975 under Direct Payment System, although he has said to have received the payment for such workings, on affixing his LTI on payment sheets. He has stated that he considered the documents, where he had put his LTI, as payment sheets, since Babus asked him to get payments on affixing his LTI on those sheets. The payment sheets have also been claimed to be lying with the said Corporation, but he has not asked for copies from them. He could not produce any evidence about his termination in 1975 or in 1978 and his evidence regarding his age, was nothing but based on assumptions. For establishing his stay at Siliguri from 1970 to 1989, he has really produced the Municipal Commissioner's certificate, but strenuously enough, the said certificate do not establish such facts beyond any reasonable doubt. The permit slip, as stated by him, was not produced. On comparison of a photograph as affixed in the certificate and the workman concerned, there appeared to be some resemblance. But even then, I feel that considering the character of the certificates, it cannot be held that either the workman was a resident of Siliguri at the material time or he worked for the said Corporation. Testing his affidavit and the evidence, it appeared that discrepant statements were made and if they are considered along with the evidence of WW-1, WW-3 and WW-4, no verdict in favour of the workman concerned, can be returned, in terms of the observations of the Hon'ble Supreme Court of India.

143. The workman WW-181 (W-1/211), has really filed the same type of affidavit and it was his evidence that the copy of the Ration card as produced, belonged to him. Apart from that, he produced a permit slip, said to have been received from Paul Bahib, also a Municipal Commissioner's certificate and four receipts of the Union. These documents were produced for the purpose of establishing his employment in the said Corporation and his residence at Siliguri and so also the membership of the said Union. In addition to the above, his Identity card was produced by the said Union, which he claimed to have been received from Shri Tibananda Banerjee. He has said to be working with the said Corporation since 1969 to 1975. He is the ONLY witness, who could produce the permit slip, which has been marked as Ext. W-7/26. It was his evidence that the Identity card was handed over to him about 3 years ago and at that time, the permit was not available, but he could trace out that slip two years ago. Although Identity card as issued on 15th May, 1978 was produced not by the workman, but by the Union, there was no positive evidence that the same was handed over to the said Union, for production by the workman concerned. The photograph as contained in the Identity card, on comparison with the appearance of the workman, was found to have close resemblance, but his age as deposed, appeared to be on assumptions. Although claimed, the workman concerned, in my view, has not been able, even on the basis of the certificate evidence as produced, to establish his stay at Siliguri from 1969 to 1989. He has admitted that the Commissioner's certificate mentioned his whereabouts and other particulars, after looking at the Ration card and the Commissioner concerned, was the Commissioner of Ward No. 29, although he was not a resident of that Ward and one Nikhil Guha was the Commissioner of his Ward. He could not say what were the contents of the certificates of the Commissioner and he took his permit slip and Ration card to the Commissioner, thinking that they may be relevant. His definite evidence was that he has mentioned the fact of inclusion of his name in the list of 464 employees, after hearing from the said Union. He could not produce any evidence of his workings with FCI from 1969 or for his workings from 1973 and 1975 as claimed. He stated that while under Direct payment system, he received payments on signing the payment sheets and although those sheets are lying with the said Corporation, he has not asked for copies of them. He could not establish, by any legal evidence that he was provided with work in 1978, as he worked in 1975 and had to admit that in his affidavit, there was no statement made about his working for 4 months in 1978 or when he was terminated. It is strange that although he remembered the date of his termination as 21st July in 1975, but he could not remember his date of termination in 1978 or he could name the four months, for which he

worked in 1978. It is true that he stated that there was strike for 1 month in 1975, but he could not say when such strike started or was lifted. The name of his workman, as it appears, was Shyamal Roy, but the permit slip as exhibited showed the name of Shri Shymal. Mr. Pathak, appearing for the said Corporation wanted to make a point over such difference but I feel that such point would really be of not much importance, the more so when, the workman concerned has stated that his name "Shri Shymal" was wrongly mentioned. Unlike other workmen, this workman was not so ignorant of the permit slip or what were written at the back of the same. But, one thing is required to be noticed that in the permit slip there appears two signatures of the workman, one in ink and another in carbon, and the explanation which has been given for those two signatures, is very difficult to be believed. The certificate of the Commissioner was admitted to have been obtained by the workman for the purpose of this case and since he was informed by the said Union that those, who have worked in the said Corporation, are required to obtain such certificates. He of course candidly agreed that the contents of the certificate of the Commissioner were not known to him, but he informed the certifier that he would require the same, as proof of his residence, but the certificate has said about his character and the workman has said that, it was not known to him, why anything was said by the certifier regarding his character. The workman could not say about his ration card of 1985 or that on deposit of the same, he got the present card or why his father's name has not been mentioned as the Head of the family. Although he could sign, but the ration card as produced, was without any signature and he claimed that there is no such signature, as the supply office never insisted on the same and he was informed by them that such signature was not necessary. He could not of course mention the name of the officials, who made such statements to him. The workman concerned admitted that there are no signatures against his drawings at the back of ration card and there was no doubt that the entries as made, were not regular and there were halfhazard entries. Apart from the four receipts, which were not of the relevant period, the workman has admitted that he has lost other receipts, like others and there is no other document/receipts, to prove his membership of the said Union. On looking at the workman and comparing his resemblance with the photograph in the identity card, there appeared to be close resemblance. Even then, there were discrepancies in his evidence and affidavit in many particulars and the certificate of the Commissioner has not, beyond any reasonable doubt, proved or established that he was a resident of Siliguri at the material time. It was also pointed out by Mr. Pathak that the signature of Paul Sahib in the permit slip, Ext. W-7/26, was different.

144. Same affidavit like the workmen as indicated earlier, was filed by the WW-182, a female employee, who claimed to be employed in the Technical Machine Shop of the said Corporation, since 1970. Her case was that she was terminated on 21-7-1975 and while so working, she received a Permit slip from Paul Sahib, on affixation of her L.T.I. in his presence and he also signed in her presence. She has also stated that after 1975, she worked in 1978 and received the Identity card from Banerjee Sahib, which was under his signature. She suddenly pointed out a gentleman by the name of Saniib Das, who was sitting along in the Court Room, while she was deposing, as her son. Much was sought to be made out, without much substance, in cross-examination, over her name Ananda Dasi and Annada Dasi. But, one thing is certain that her evidence regarding age, her husband's age and to some extent, the age of her son Sanjib Das, were not only discrepant, but they were really hard to be believed and all her evidence on those aspect, were merely an assumptions. Although, she gave her date of termination in 1973, yet she was really ignorant about the date and month, when asked about the same. She could not prove with any convincing evidence, about her stay at Siliguri from 1970 to 1989 and the evidence through the Commissioner's certificate, as sought to be proved, was far from being satisfactory. Even though she claimed to have constructed her structures on khas lands, she could not prove such fact and admittedly, her name has not been mutated. She could not mention the amount, which she was paying, as tax and the certificate of the Commissioner, really contained a wrong address. In fact, she could not also prove about

the structure and the land. There was admitted correction of her husband's name in different ink in the Ration card Ext. W-7/27, the reason for that, she could not establish or she could establish, who made such corrections. But, she contended that the name of her late husband was subsequently written by the Commissioner. It is strange and very difficult to accept that a Municipal Commissioner has such right and authority to incorporate such or any corrections in the Ration card. She could not also say anything about the date against such corrections. The paper at the back side of the Ration card was pasted by a white paper, without any date or signature of the Ration Shop Owner. She could not also say, when she last drew ration on her ration card. Her Ration card was also without her L.T.I. She has admitted to have obtained the Commissioner's Certificate, to prove her stay at Siliguri. But really, she has not succeeded to prove the same with any legal evidence or from the concerned certificate. The Union subscription receipts as produced, were not of the relevant period and like others, she has not taken any steps for recording or securing such lost receipts. Like others, this witness has also said to have lost the Permit slip and has neither lodged any information about such loss nor for securing a copy of the same. Naturally, the said slip was not produced. She has not been able to produce any evidence of her termination either in 1975 or in 1978 or could establish or say anything about the particulars of her four months working in the said Corporation in 1978 or could establish her evidence that those who worked in 1975, were provided with work in 1978. The statements made by the witness, on payment sheets, could hardly be believed. She was really ignorant about all the entries in her Identity card and was not in a position to identify the signature of Shri Banerjee, under whose signature, the same was said to have been received by her. The card was issued on 11th November, 1978. There was no such seal of the said Corporation, the particulars whereof, will appear from the evidence of WW-1 and WW-2. On comparison with the appearance of the witness with her photograph in the Identity card, there appeared to be little resemblance. On the basis of her affidavit and the evidence, there appeared to be apparent inconsistencies and if her evidence and the statements are considered along with the evidence of WW Nos. 1, 3 & 4, it is very difficult to hold that she has been able to bring her case within the zone of consideration in terms of the order by the Hon'ble Supreme Court of India. There was no legal evidence about the inclusion of the name of this workman in the list of 464 employees.

145. There was really no different statements made by WW-183 than that of the other employees. In his affidavit, he has not of course produced his Identity card. He has claimed to have worked from 1971 till 1975 and in that year, he has stated to have received a Permit slip under the signature of Paul Babu and that slip, he has stated, also contained his L.T.I. like the other employees. He has said to have lost the slip and he has admitted that in his affidavit, he has not said that Paul Babu signed that slip in his presence. No evidence, either of such loss of the slip or of any step taken by him on such loss, was available. Naturally the said slip was not produced. He could not establish his statements regarding his employment under the Direct Payment System or for receiving payments for that on the basis of Payment Sheets. Even though claimed, production of the copies of those sheets, said to be lying with the said Corporation, have not been asked for. His evidence regarding the inclusion of his name within the 464 employees, were based on hearsay and he could not give any particulars in which serial his name appeared. The Union subscription receipts were not of the relevant period.

146. Workman WW-183 has really filed the same and similar type of affidavit, without his Identity card, like other workmen. He has claimed to have worked in F.C.I. from 1971 to 1975 and was terminated in 1975. In 1975, he has claimed to have received a Permit Slip from Paul Babu and alleged that Paul Babu signed the permit slip and that contained his L.T.I. which was affixed in the presence of Paul Babu. It was his claim that on the basis of the xerox copy of the Ration card, he was drawing ration and has also annexed with his affidavit, a certificate from Shanti Chakraborty, Municipal Commissioner, who knew him and he also knows him. Apart from that he has annexed another certificate from Dharendra Kumar Banerjee, Ex-Depot. Incharge N.J.P. of the said Corporation and has claimed

to be knowing him, apart from the fact that the said Sri Banerjee knew him. He has produced with his affidavit, two Union subscription receipts, which were not of the relevant period.

147. He could not establish with any legal evidence in respect of his working with the said Corporation from 1971 to 1975 as mentioned, his claim was that he has worked in the said Corporation from 1971 to 1975 and has stated to have been terminated on 21st of the 7th Month of 1975, but he could not name the 7th month or could say what would be the date immediately prior to 21st. His evidence that he has produced with affidavit, documents showing his termination on July 21, 1975 was not true. In fact, no specific document has been produced. It was claimed by him that in 1973, he worked under Direct Payment System and received payment on affixation of L.T.I. on payment sheet and he stated that he considered the sheets, on which he affixed his L.T.I.C. as they were described so by the Babus of the said Corporation. No doubt, he had at least named 2 of such Babus, but admittedly neither such name nor the particulars of the Babus have been mentioned in his affidavit. He could not testify, what were the contents of the payment sheet and although it was his specific evidence that those sheets are lying in the said Corporation, but he has not asked for copies of them from the said Corporation.

148. His evidence that his name was included in the list of 464 employees was made on the basis of which he heard from his Union. But he has not mentioned such fact in his affidavit. He could not mention the number of this proceeding. Although, he has alleged to have informed that number to his lawyer viz. the lawyer, who drafted the affidavit, on January 4, 1992. He deposed January 10, 1992 and it is strange within such short span of time he has forgotten the number of the proceeding. Of course, he has thereafter retracted his statement that the number of the case disclosed to the lawyer. On the basis as aforesaid, it is very difficult to place any reliance on the testimony of the workman.

He stated that the strike in the said Corporation started in the 1st month of 1975 and the same continued for one and half month, but he could not mention the name of the first month. It was his evidence that he was not aware of the full name of Paul Babu i.e. the gentleman, who gave the Permit slip, but he stated that he is known as D. M. Babu and after 10 days of the strike in 1975 that slip was given to him. He could not mention the month, when he received the Permit card, but stated that the same contained his name, his L.T.I. and the signature of Paul Babu, but he was not aware of the number of that slip and had to agree that in his affidavit he has not mentioned that Paul Babu signed the permit slip in his presence. Although he claimed that a copy of the slip was available with the said Corporation, but he has not asked for a copy and like others, he has also stated to have lost the permit slip and that too 3 years ago and had no document to establish as proof of such loss and he was candid enough to say that for such loss, he has neither lodged any information to the Police Station nor he has informed the said Corporation about such loss and asked for a copy of that slip, which was said to be lying with the said Corporation. Although, he claimed to have possessed the Ration card in 1986, but he could not establish that on deposit of such card, he got the present card in 1990. He claimed to have received the Ration card on 1st month of 1990, which appeared to be incorrect from the dates mentioned in the Ration card, as produced. There were certain correction in the Ration card, which he claimed to have been incorporated by the Supply Office, but such incorporations were not under the seal of that office. He admitted that the Ration card did not contain his L.T.I. although he has claimed to be drawing ration on the basis of that card, but he was unaware whether there is any signature of the Ration Shop Owner against his drawings.

He stated that the certificate of the Municipal Commissioner was received on the first month of 1990, which was admittedly wrong. He has of course, stated that the said certificate contains his name, his father's name and his photograph. He has stated that the Commissioner told him that he will give him the certificate, only if he can bring the photograph and it is stated that the certificate was asked for, for the purpose of this case. He could not say when Shanti Babu asked him to produce the photo, but has stated that the same was snapped 2 or 3 days after he was asked for the same and the certificate was asked for, as the

Union asked him to bring all possible proof for the purpose of this case. He was also not aware of the contents of the certificate of Dhiren Babu, but he admitted that the same was not in the Form of F.C.I., but on a white paper. He also agreed that at the time, when he obtained the certificate from Dhiren Babu, he was not in service and could not say when he retired. He admitted that previous to this certificate and when Dhiren Babu was in service, he never obtained such certificate from him. He also admitted that in the certificate, there was neither any seal of Dhiren Babu nor of the said Corporation. One thing should be noticed, in the certificate of Dhiren Babu, he has said to have attested the photograph and specimen signature of the workman concerned, but in the certificate there is no L.T.I. of the worker and any of his signature. This, in my view, shows the character of the certificate as produced and perhaps the same is far from being true and genuine. Another thing which strikes me, why Dhiren Babu and under what authority Dhiren Babu has issued such certificate, only on a plain piece of paper and admittedly, on the date of issuing such certificate he was not in service.

As indicated earlier the workman produced 2 Union subscription receipts, none of which was of the relevant period and on being asked, he has stated that 1989 receipts have been lost and about others, he could not say when those have been lost. It was his specific evidence, apart from the receipts as produced and those which have been lost, he has no other evidence to establish his membership of the Union.

The ages as indicated by him and so also the date were only on assumption. For proving his stay at Subhaspally from 1971 to 1989, he has only produced the Municipal Commissioner's certificate and has admitted that he has no other document to establish such fact. He has stated to be staying on Government Khas land, but could not produce any document to show that such land have been settled with him, where he has raised his construction. Even though he has stated that Shanti Babu, the Commissioner know that he was staying on the Khas land, but no such fact will appear from a reference to the certificate as issued by him and in his affidavit also, he has not stated anything about such khas land. The certificate as issued by Shanti Babu has not also established with any statement or due evidence about the stay of the workman from 1971 to 1989, at Subhaspally, Siliguri.

On a comparison of the photograph as produced and the appearance of the workman concerned there appeared to be close resemblance, but even then, on the basis of the affidavit evidence and the evidence as tendered, it appeared that pleadings were full of discrepancies and as such, it will not be safe to rely on them, to hold that either the workman was a resident of Siliguri at the material time or he was working for the said Corporation on the basis of the certificates as produced, I feel that identity of the workman, his working in the said Corporation or stay at Siliguri at the material time, has now been proved. The above evidence being tested and considered with the evidence of WW-1, WW-3 and WW-4 also leaves no room for doubt that he has not been able to bring his case, for necessary consideration in terms of the observations as made by the Hon'ble Supreme Court of India, with regard to his identity and residential qualification.

149. The affidavit of WW-184 (W-1/219), another lady, was nothing new than that of the affidavits of other workmen. She has stated to be working in the said Corporation since 1970 and was terminated in 1975 and during the tenure of such working, she received a Permit slip, signed by Paul Babu and that slip also contained her L.T.I. She has, like others, claimed to have lost that slip. It was her further case that after 1975, for four months in 1978, she was reappointed and at that time, she received the Identity card, which contained her photograph and L.T.I., from Jibananda Banerjee, and the same was also signed by him. She has produced a Ration card and has stated to be drawing rations on that basis. She has also produced a certificate of the Proddan Dab Gram 2, Gram Panchayat, as a proof of her residence at Siliguri and one subscription receipt of the said Union, which was not of the relevant period, to prove her membership and connection with them. Like other workmen, her evidence was that she has lost all other receipts and apart from the lost and available receipts, she had nothing to show about her membership of the said Union and has



taken no steps either to get copies of them from her Union or to lodge any information with the authorities. She has admitted to have received the certificate from the Anchal Prodhan, although the certificate mentions, is from the Prodhan Gram Panchayat, on her asking and for the purpose of this case, on being asked by the said Union that she will have to depose in this proceedings regarding her residence and the said certificate which was dated 29th July 1991, was said to have been obtained 5 or 6 months ago. She deposed on 10th January, 1992. She could not deny the fact that her certifier has not mentioned in the certificate that he knew her for a long time. The pasting as made at the back side of her ration card, which was claimed to have been made long time ago, was not signed by the Ration Shop Owner. She has claimed to have drawn ration on her card, but, no such entries could be found out or established. She has ofcourse claimed to have drawn ration on her daughter's card. Some of the entries were not made serially, the reason of which, she could not explain. The daughters' card contained, not the name of the father but the name of the mother, as the Head of the family, there was no L.T./signature of the holder in the card and the same was issued under the signature of the Prodhan. The address in the Ration card as produced, was also not complete and the same was not legible.

150. It appeared that this workman was not sure about her age, her husband's age and so also the dates and months of a year and even though, she has claimed to be residing in 1972 to 1989 at Siliguri, apart from the certificate and Ration Card, she could not produce any other document to establish her stay or the construction, in which she is staying. She was specific that her construction which was in an Anchal, had no premises number, but there is a holding number, the particulars whereof, she could not say and even though she has claimed to be paying Panchayat tax, she could not establish such fact with any convincing evidence. She could not also establish, such evidence of her working in F.C.I. since 1970 or from 1973 to 1975, when she claimed to be employed under Direct Payment system. It was her evidence, for such employment under Direct Payment system, she used to draw on affixing her L.T.I. on Payment sheets, but harring such statement, she could not produce any other convincing legal evidence. In fact, she admitted, not to have possessed any other document, to establish such fact. She was ignorant about the contents of the Payment sheets and even though she claimed them to be lying with the said Corporation, she has not admittedly asked for production of them. Although she stated that for four months in 1978, she was re-employed with the said Corporation, she could neither produce any cogent legal evidence for the same nor she could say, when she was terminated in 1978. She could not also specifically say about the date, when she was terminated in 1975. Strangely enough, she has stated that after her termination in 1978, she remembered the date for some time, but thereafter, she has forgotten the same. She could not, in fact, remember or name the four months for which she worked in 1978 and has failed to produce any convincing evidence to establish the fact that for her working in 1975, she was given employment in 1978. Her evidence regarding inclusion of her name in the 464 employees were based on hearsay and she could not say, in which serial of that list, her name appeared.

151. Although she has said about the strike in 1975, she could not give the exact date, but she stated that the said strike continued for more than one month. She could not give her permit slip number or the date, when she got the same under the signature of Paul Sahib and she specifically stated that she will not be able to identify the signature of Paul Sahib or whether at the back of the permit slip, anything was written or printed. Like others, she has also said to have lost the permit slip, but has not either asked for a copy of the same from the said Corporation or taken any steps against such loss. She claimed to have received the Identity card from Jibananda Banerjee, containing her L.T.I., her husband's name, but has stated that she was ignorant of other writings therein by the said Shri Banerjee. It was her case that the said Shri Banerjee signed the Identity card in her presence, but she was not in a position to identify his signature and has stated that her number in the Identity card was 6. This Identity card which was issued on May 15, 1978, was admittedly produced by the said Union and not by the workman concerned and she admitted that she did not remember when the card was

produced before this Tribunal by her Union and she could not also establish by any reasonable evidence that she had handed over the card to the said Union.

The evidence of this workman was to a great extent found to be inconsistent with the statement to her affidavit and if her evidence is considered along with the evidence of WW-1 and 3, it will appear that the seal as appearing on her identity card, did not tally with the evidence as recorded earlier in that respect. Testing the evidence with the evidence as recorded earlier, it is very difficult to hold that this witness has been able to bring her case within the four corners of the directions of the Hon'ble Supreme Court of India and another fact, which should be noted, that she produced only one Union subscription receipt, which was not of the relevant period and there was admitted evidence that the said receipt was torn at a very material portion and the certificate of the Prodhan has not indicated, since when, she was residing at Siliguri. On a comparison of the appearance of the workman with her photograph as annexed with the Identity card, it appeared that there was no resemblance.

152. The affidavit evidence of WW-185 and so also his evidence, was in the same line and in fact, like the other workman. This workman has not produced his identity card. He has produced xerox copies of the ration cards and the front portion of his ration card was absolutely illegible and there was no evidence of any drawings at the back portion of the card. Two other cards as produced by this workman also contained no entries of the drawings at the back portion and only in the other card of Supria Ray, there were some entries of drawings, without any signature of the Ration Shop Owner. The workman has produced a certificate from Upa-Prodhan, Dab Gram Anchal Panchayat, to establish his residence and that certificate contains a photograph, which was produced, to establish his identity. His evidence was that he was working in F.C.I. since 1972 and on July 21, 1975, he was terminated and during such tenure, he received a permit slip from Paul Babu, containing his signature, the name of the workman and signature, which he subscribed in the presence Paul Babu, but like others, he has said to have lost the permit slip and has not either asked for a copy of the same from the said Corporation or taken any steps against such loss. It was his evidence that after 1975, for four months in 1978, he had worked with the said Corporation, but he could not remember the months for which he worked. He has said to have received the Identity card from Jibananda Banerjee in 1978, which again, he has said to have lost by fire. He could not produce any evidence regarding his workings in the said Corporation in 1972 or any evidence showing about his workings under Direct Payment System in 1973. He could not also produce any evidence about his termination in 1975 or either his appointment in 1978 and termination in that year. He could not name the four months like others, for which he worked in 1978 or produce any evidence for such working.

153. Although he has stated to be receiving payment on putting his signatures on payment sheets, which he has claimed to be lying with the said Corporation, but he has not asked for copy of such sheets from them and was not in a position to remember, whether he has made any such statement in his affidavit, but has stated to have informed such fact to the said Union, and has admitted that he has not incorporated these statements in his affidavit. Of course, the loss of the permit slip was attributed to a fire, which broke out on March 11, 1980 and has stated that by such fire, his entire house was gutted and he could not save any of the properties, which were within. It was his case that he has lost the Permit Card, which was received in 1975 and in 1978 only, he could realise that he has lost the same. He has annexed with his affidavit two letters in Bengali, dated February 28, 1980 and July 8, 1980 respectively, addressed to the Assistant Manager of the said Corporation and has stated that in these letters, he has said about his loss of the permit slip and there was no other document to establish such loss. Admittedly, he has not asked for the copy of the permit slip from the said Corporation, although has stated that the same was lying with them. He could not say the contents of the Permit slip, since he was not conversant with English and has stated that at the back of the same, something was written in English. No information for loss of the permit slip was lodged with the Police Station and although he has claimed that the slip was given to him on March 18, 1975, he has not mentioned that date in his affidavit. Ofcourse he had to admit that he had not

document disclosed, to establish the date, in his affidavit. In the said letters as mentioned above, he has said to have mentioned the year of the Identity card as 1978 and also to have given his identity card number. One of those letters, which was dated July 8, 1980, was claimed to be a G. D. lodged with the Police Station, but he admitted, to have lodged such information, after about 5 months of the happenings and that too, on being asked by Narayan Gupta, an officer of the said Corporation. On being asked, in the letters dated February 28, 1980 and July 8, 1980, he has claimed and marked the seal of the said Shri Gupta in Red Pencil and so also the signature of the said Shri Gupta. He admitted that over such incident of fire, there was no police investigation and the fact of gutting of his house by fire, was also not informed to the Police. The Diary dated July 8, 1980 as mentioned earlier, was said to have been filed by him on the advice of the said Shri Gupta, when he went to him for the second time, for a copy of the identity card, but such fact, has not been mentioned in his affidavit or he has mentioned in his affidavit, about the lodging of the information to the Police. On being asked, he could not say, why Shri Gupta asked him to lodge the diary. He had to admit that excepting the identity card, he has not specifically mentioned in the said two documents, about the other belongings, which were burnt and in the letters as mentioned, he has not also mentioned, when he received the Identity card or the particulars of the same. It was known to him that in case of such fire, assistance could be received from Gram Panchayat. He could not produce any document to show that he has asked for such assistance.

154. His evidence regarding age was really on assumptions and perhaps far from being the real, as would appear from the admitted documents. It was his evidence that the Upa-Prodhan, who certified to have been knowing him and about the burning of his house, has not stated such fact in the certificate or since when, he knew him. Much, without any substance was sought to be made, on the signature of this workman, who was found to have signed as Anil Roy and also in some places as Anil Chandra Roy. He has signed the affidavit as Anil Roy and in the certificate of the Upa-Prodhan, he has also signed in that manner. Ration cards were said to have been received by the workman and his family in 1987, but, he could not point out the date and year of the issue of them. He admitted to have received the ration cards from the Anchal, containing his name and other particulars, the dealers name was mentioned as Chanchal Biswas and the seal of the dealer was also available from his card. The pasting at the back side of his ration card was really without any evidence or seal of the Ration Shop Owner. It was his specific evidence that ration cards were received from Anchal Office and not from the Ration Office and he stated that pasting at the back side of Kalpana Roy's ration card, was made one year ago. Of course, there was no date and signature or seal of the Ration Shop Owner, establishing such fact. The reasons given by him, about such pasting, if they have been legally made, can be accepted, but in view of the character of the pastings as mentioned earlier, it is very difficult to accept such legality. The ration cards admittedly did not contain either the signature or the L.T.I. of the holders and it was stated by the witness that such signature or L.T.I. was not necessary. It is very difficult to accept such statement. He pointed out that at the back side of Supriya Roy's ration card, there were evidence of some drawings over the paper as pasted. Such statements appeared to be true, but those entries were also not with any seal or signature of Ration Shop Owner. The witness had to admit that apart from the ration cards as produced, he had no other documents to show that in 1978, he or his family had ration cards or on deposit of those cards, the present cards were received. Since some doubt arose about the date July 8, 1980, as claimed to have been written by the witness, on being asked he wrote that date in a piece of paper, which has been kept as Exhibit W-7/29 and on comparison of the writings, there appeared to have some doubt. It was stated by him that the photograph that was affixed in the certificate of Upa-Prodhan was snapped six months ago, as he was asked by the said Union to bring all his records. He has admitted, as such, he has brought the certificate, to establish that he is a resident of Santinagar and the Upa-Prodhan never asked him, why he required the certificate, which was admittedly issued after hearing him. The photograph was claimed to have been snapped on the asking of the Upa-Prodhan. The witness had to admit that

the Upa-Prodhan, who certified his case, was not the Gram Panchayat of Santinagar and one Shri Hiralal Das, was the elected member of Santinagar.

155. His evidence/statement regarding the inclusion of his name within 464 employees was said to be made on the basis of informations received from Jana Babu, who was not a member of the said Union, but an official of the said Corporation. He was ignorant of the full name of the said Jana Babu, but the evidence of Jana Babu (WW-4) was silent about this fact. Although the workman has claimed to be staying at Santinagar from 1972 to 1989, in a shanty constructed on vested lands, but he could not establish such fact with his evidence. He could not show that he got permission for constructing that shanty on vested lands from the Government and his affidavit was also silent on this point. He also stated that the maker of the certificate knew about such stay of his on a vested land, but that fact has not been mentioned in the certificate itself. He has produced four Union subscription receipts, but none of them were of the relevant period and like others, he has said that apart from those receipts, he has lost all other receipts and has not taken any steps either for securing copies of them or for production of them and he said that no information for such loss, has also been filed. Is it not strange that when he himself has stated that every thing in his house was lost by fire, the four Union receipts were saved and so also the ration cards.

156. On comparison of the photograph as available, with the appearance of the workman, ofcourse there appeared to be some resemblance. But even then, testing the statement in the affidavit and evidence as recorded, there appeared to be glaring discrepancies and inconsistencies and if those statements and the evidence are considered along with the evidence of WW-1, 3 and 4, I feel that this workman cannot claim to get any benefit under or in terms of the Hon'ble Supreme Court of India's order.

157. WW-186 (W-1/220) a female workman, has filed the same type of affidavit and also deposed practically in the same line, like other workmen. She has produced five Union subscription receipts, none of them were of the relevant period. She has stated to be working in the said Corporation since 1970 and was terminated on July 21, 1975 and during her working in 1970 to 1975, in 1975, Paul Babu gave her a permit slip, containing her L.T.I., which was affixed in the presence of Paul Babu, who also signed the same in her presence. She has also said to have lost that slip like others and she has also stated that after 1975, for four months in 1978, she worked for the said Corporation, but could not name the months for which she worked. She has claimed the photograph in the Identity card to be her and has stated that the same also contains her L.T.I. It appears that the Identity card was issued on May 13, 1978 and she has claimed that the same was given to her by Banerjee Sahib, whose name was not known to her. In the Identity card, the workman has been shown as Duli Rani Rai, but, she has affirmed the affidavit as Duli Rani and much was said and contended on such difference, which I feel was not of much substance. But one thing is certain that she was ignorant of her age in 1987, 1979 and 1989. She has claimed to be staying from 1970 to 1989 at Hatiadanga, Pronab Nagar Colony, Jalpaiguri, but could not establish such fact with any document. The place where she is staying was claimed to be under a Panchayat and she could not produce any documentary evidence to establish her stay at Hatiadanga. She could not also remember, whether she has said about her working in the said Corporation. She could not say how many days ago, she has affirmed the affidavit. She deposed on January 15, 1992 and the affidavit was affirmed on January 13, 1992 and she could not even mention the date when she deposed. She has stated to have annexed with her affidavit, documents showing about her workings from 1970 to 1975, which was incorrect. She could not say, whether she made any statement regarding the manner in which she drew her emoluments in her affidavit or if any statement was at all made on that account. She considered the documents, while affixing her L.T.I., to be Payment sheets, as she was asked to put her L.T.I. on those sheets by the Babus. She has named some of the Babus, but she has admitted that their full name were not known to her and she was not in a position to remember, whether in her affidavit, she has mentioned the names of those Babus, whose names she has said in her deposition. She was ignorant of the contents of the payment sheets and all

the above facts, although claimed, have not been mentioned in her affidavit. She again stated that she had no document to show that she used to draw on affixing her L.T.I. and could not say about her statements regarding her workings in the said Corporation in 1978, and on being asked, she categorically stated that in 1978, she was working in terms of the order of the Hon'ble Supreme Court of India, but could not say, on what date in 1978, she had worked. Apart from the Identity card as produced by the said Union, she had no other evidence to prove her workings with the said Corporation in 1978 and she could not say, when in 1978, she was terminated, although in her affidavit, she has stated her termination was on July 21, 1975, but she was not able to name that 7th month or could produce any evidence of her termination on July 21, 1975. Her evidence regarding the pending proceeding in respect of 465 employees, was based on hearsay and she could not mention her serial number in the list of those 465 employees. She has stated that there was strike in 1975, which continued for more than a month, but she admitted, not to have remembered, whether she has said about that strike in her affidavit. It was her evidence that the permit card, which was given to her by Paul Babu, whose full name was not known to her, contained her name, her signature/L.T.I. and signature of Paul Babu, but she would not be in a position to identify his signature, if shown. Although like others, she has said to have lost the permit slip and she was not in a position to remember, when she has lost the same, but admittedly, she has not lodged any information to the Police Station for such loss or has stated in her affidavit about such loss. She has admitted, not to have informed the said Corporation about the said loss and was not in a position to indicate, whether at the back side of the said permit slip, there was any writings or printings. Although she has said about some of the contents of the Identity card, which was given to her under the signature of Banerjee Sahib and Deo Prosad, she admitted that she would not be in a position to identify those signatures and she did not remember the date when the card was received by her. The card appeared to have been issued on May 13, 1978. Apart from the above, she was ignorant of the other entries or writings in the Identity card. This card was produced before the Tribunal, but the workman concerned was not in a position to establish that the same was handed over by her to the Union. On a comparison of the appearance of the workman concerned with the photograph in her identity card, there appeared to have been some resemblance. But even then, considering the evidence and the affidavit as filed, it appeared that her story was not believable and she has not been able to bring her case within the four corners of the directions of the Hon'ble Supreme Court of India, regarding her residence and identity. It should also be noted that she has not produced the ration card.

158. The affidavit of WW-187, which has been filed without any identity card, was in the same line like other workmen. He has annexed xerox copies of Ration cards, to establish his residence/identity, apart from annexing a certificate from Bejoy De, a Commissioner of the Municipality, also for the purpose of establishing his residential qualification. In addition to that certificate of Shri De, another certificate from Dhiren Kumar Banerjee, who was earlier employed with the said Corporation, has also been filed, for the purpose of establishing that the workman concerned was in employment of the said Corporation in 1975. With these certificates, he has annexed too of his photographs and on comparison of them along with the appearance of the workman, there appeared to be no resemblance.

One of the subscription receipts, out of the five, was for the relevant period and that was disclosed, for the purpose of establishing his membership of the said Union. It was his evidence that he was employed with the said Corporation from 1972 to 1975 and at that time, he received a Permit slip from Paul Babu, after the strike, which occurred. He has stated to have affixed his L.T.I. in the said permit slip and that also contained the signature of Paul Babu. But, like others, he has also said to have lost the permit slip. It was his evidence that in 1975, he was terminated and thereafter, for about four months in 1978, he was employed and at that time, Dutta Babu gave him an Identity card, which also, he has lost. It is strange that for such loss, he has neither lodged an information to the Police Station nor taken any steps to secure the same. He was candid enough to say that he did not remember, whether he informed about such loss to the said Corporation.

158. His statement regarding his age and the years and months, were found to be made on assumptions. Although he claimed to be 50 years of age, he could not produce any evidence to establish such fact or he could produce any evidence to show that he was at Siliguri from 1972 to 1989. The documents as disclosed with his affidavit, for the purpose of establishing such stay as mentioned, were not sufficient. The Commissioner's certificate has not specifically mentioned about the years, when he was staying at Siliguri. His ration card, the front portion of which was absolutely blank and there were few entries at the back of the same, contained no L.T.I. and there was something written in Red ink, which he stated to have been made two years ago, after checking. Other ration cards as produced by him also contained no L.T.I. and the back portion of them have many entries made, in a very irregular fashion. He could not produce any document in support of his stay on the concerned land at Siliguri and he has admitted, not be paying any tax. Regarding his workings in the said Corporation from 1972 to 1975, he has not produced any document. Although he has claimed the documents to be lying with the said Corporation, he admitted that such statements have not been made by him in his affidavit. He was specific that during summer time in 1978, he has worked for four months in the said Corporation, but could not remember when he entered such services. Although claimed, he could not establish that those who worked in 1975, got the re-employment in 1978 and he claimed that the paper were lying with the said Corporation, but admitted that such statements, he has not made in his affidavit and he was not in a position to say, when he was terminated in 1978. In fact, he has not disclosed any record about his workings in the said Corporation in 1978. It is strange that although in his affidavit, he has stated that on July 21, 1975, he was terminated, but he could not name the 7th month of that year, but said to be remembering the date, as all employees were terminated together. This facts, of course, were not stated in his affidavit. He has not disclosed with his affidavit any document showing his termination either in 1975 or in 1978.

He has said to have received payment on affixing L.T.I. on payment sheets, but could not produce any record, to establish such statements and he specifically stated that those papers were lying with the said Corporation, but even then, he has not asked for copies of those records, from them. He was ignorant about the contents of the payment sheets. He was also ignorant about the number of the present proceeding and could not say, in which serial number of 464 employees, his name appeared. The statements made by him on this point, were also not based on his own knowledge. He admitted that the full name of Paul Babu, who granted him permit slip, was not known to him and he has also lost that slip about three years ago and for such loss, he has neither made any representation to the said Corporation for a copy nor has informed them about such loss. Even though, he has stated that the copy of such slip was lying with the said Corporation, he could not produce either any document to establish such loss or that he lodged any information with the Police Station for the same. He also admitted that he would not be able to identify the signature of Paul Babu. Although he did not produce his identity card, he stated that the same contained his photograph and the signature of Dutta Babu, apart from the signature of Deo Prosad. He could not say specifically, when he lost the identity slip. For such loss of the identity card, admittedly, no information either with the Police Station or with the said Corporation, was also lodged. He could not say, what statements he made regarding the certificate of Bejoy Babu in his affidavit and was also not in a position to say about the date of the said certificate. He admitted that the photograph as annexed with the certificate of Bejoy Babu, was snapped one and half years ago and it appeared that although he resides at Subhaspally, within Ward No. 18, he obtained the certificate from Bejoy Babu, who was a Commissioner of Ward No. 29. Apart from the fact that the certificate contained his name, his address, his father's name and the photograph, he could not say what else were there in the certificate and he admitted that the photograph as affixed, was asked for by Bejoy Babu and he required the certificate for the purpose of establishing his stay at Siliguri. He also admitted that he obtained the said certificate on the asking by the said Union. The ration cards as produced, were of 1987 and the workman could not say about the contents of them or who has written in Red Ink, in his ration card, although he has stated that such writing was done two



cars ago and his name has been written in that manner, after checking and so also his father's name. There was no evidence available that such writings in red ink were under the signature of the person, who checked and admittedly, there was no L.T.I. in his card. He could not say how many days ago from the date of his deposition, which was January 15, 1992, he drew his ration last or whether there was any signature against his drawings, at the back of the ration card, by his shop owner and he admitted that at the back of his ration card, there were entries in respect of eight drawings only and could not say, if such checking as mentioned earlier, was initialled. He could not also establish, on surrender of his cards, the present cards were obtained.

159. Regarding the certificate of Dhiren Babu, the workman has admitted to have obtained the same on his taking and that certificate contained his photograph and name. Apart from this, he could not say about the other contents of the same and was not in a position to say whether the certificate was in the Form of the said Corporation. He admitted that he obtained the certificate, when Dhiren Babu was not in service and he gave the certificate about one and half years ago. He had to admit that in the certificate there was no seal of Dhiren Babu and he had no idea, whether Dhiren Babu has retired and after his retirement, if he had authority to give such certificate. It is true that he has not obtained the certificate during his tenure, where Dhiren Babu was in service and could not give any convincing evidence, as to why he obtained that certificate after his termination in 1978. He also agreed that Dhiren Babu gave the certificate, without looking into any paper and he stated that the photograph as affixed with the certificate of Dhiren Babu, was also snapped one and half year's ago. Apart from the receipts, like others he has stated that all other receipts have been lost and he said, the receipts were not produced for the purpose of this case. On comparison of the photographs as disclosed with the certificates and the appearance of the workman, it appeared, there was no resemblance and on considering his evidence, so also his affidavit, it appeared that the statements, which were discripant and not reliable, were made. In any event, I feel, on consideration of the above matters, the workman concerned have not been able to establish his identity regarding his residence and appointment in terms of the observations of the Hon'ble Supreme Court of India, if the evidence and the statements in the affidavit, are read and considered with the evidence of WWS 1, 3 and 4.

160. The affidavit of workman WW-188 was also in the same line like the other workmen and this workman has not produced the Identity card. It was his evidence that along with the affidavit, he has filed copies of four duplicate ration cards and a certificate from Dhiren Babu, apart from a certificate from Harisadhan Ghosh of Siliguri Municipality, who knew him and he also knows him. This workman has annexed with his affidavit, an information, which was said to have lodged with the Siliguri Police Station, regarding the loss of the Identity card and six Union subscription receipts, none of which were for the relevant period.

161. He has stated to be working in the said Corporation since 1972 and on July 21, 1975, he was terminated. He could name the 7th month of the year. It was his evidence that in 1975, he received the permit card from Paul Babu, containing his signature and that of Paul Babu, and has stated to have signed the Permit slip in the presence of Paul Babu, but has stated like others that he has lost the permit slip. It was his evidence that after 1975, for four months in 1978, he worked for the said Corporation and he was able to mention the said four months. It was his evidence that he received an Identity card from Dutta Babu in 1975, containing his photograph, his signature, the signature of Dutta Babu and that of Deo Prosad, but he has lost that card and he was not in a position to produce the same. Although the information to the Police Station was in Bengali, the workman agreed, he was not in a position to read and write Bengali and could not also name the person, who wrote the said information.

162. Apart from the above, his date of birth or his evidence regarding the same, was purely on assumptions and

he stated that apart from the ration card and the Commissioner's certificate, he has no other document to establish his stay at Siliguri from 1972 to 1989. He has admitted, not be paying Municipal Tax and have admitted, not have produced any document with his affidavit, to establish his statement that he worked with the said Corporation in 1972 or that, he worked under Direct Payment System from 1973. He has ofcourse stated to be receiving payments on the basis of Payment Sheets, which he has claimed to be lying with the said Corporation, but has not asked for the copies from them. He has stated that he has considered the said sheets as payment sheets, on hearing. He has not named the month, for which he worked in 1978 or produced any document for such working. He has not said, when he was terminated in 1978. He could not also establish that those who worked in 1975, were given work in 1978. Although he has claimed to have lodged information with the Police Station, he had to admit that the year of issue of the Identity card, was not mentioned there and he could not remember, whether he has mentioned his Identity card number in such information and could not explain, why the copy of the G.D. was sent to the D.M. of the said Corporation. Although he has stated that such incorporation was made by the writer at his instance, but he could not convincingly state, whether the copy was really given to the said Corporation. In the diary as filed, he has not mentioned the fact that Dutta Babu gave him the Identity card with his signature in 1978. He, ofcourse, could not produce any evidence to show that Dutta Babu gave him the Identity card and he also agreed that in his affidavit, he has not mentioned the sending of the copy of the G.D., to the said Corporation. The diary was lodged in 1985 and the Identity card was said to be given to him in 1978, which he has lost, but he could not explain why he had to wait for such a long time till 1985, to lodge the diary, for the loss of Identity card. He could not say, why the certificate of Dhiren Babu was not in the Form of the Corporation. He got the certificate in April 1990, but he could not say about the date of the same or the contents of the Certificate. He agreed that at the time of issuing the certificate, Dhiren Babu had retired and he has not taken such certificate from Dhiren Babu, while he was in service and the certificate was taken later on, as the same was asked for by the leaders of the Union. This fact ofcourse, he has not stated in his affidavit. The witness admitted that there is neither any seal of Dhiren Babu in the said certificate nor that of the said Corporation and Dhiren Babu issued the certificate, only after having a look at him and not looking at the papers. The photograph as affixed in the certificate was stated to be snapped on the 4th month's 1990 and he did not agree that Dhiren Babu had no authority to issue such certificate or that if any employee of the said Corporation requires a certificate, the same should be obtained in the Form, from the said Corporation. The certificate of Dhiren Babu was admittedly obtained from his residence and the witness was ignorant of the contents of the same and he was not sure, whether the Commissioner, in his certificate, has mentioned his Ward number. He had to admit that the certificate of the Commissioner contained, not only typed words, but hand written words and the same was not typed in his presence, but the writings were done before him, when he produced the photograph, which was asked for by the Commissioner, as he required for a document of proof from the Commissioner, who was from ward No. 12 and the Commissioner of his Ward was Ashok Bhattacharjee. He has explained that he had to obtained the certificate from the Commissioner of another Ward, as the said Shri Bhattacharjee became a Minister and thereafter, there has been no election for that Ward.

163. The workman could not produce any evidence to show that he had ration cards in 1986 and he has got the present ration cards of 1991, on deposit of those ration cards of 1986. He has admitted that in the ration cards, there were no signature and the back portion of his card was absolutely blank. Two out of the three cards, were absolutely blank. Much was said, ofcourse without any substance, about the difference of name of Lalo Paswan and Lalo Paswan. There were admittedly some corrections in his ration card and the workman was not aware, who made them and stated that there were no initials against such corrections. It was stated by the workman that he has said about inclusion of his name in the list of 454, after hearing

from the leaders of the Union and he could not mention his serial number in this case, also on hearing from the leaders. He had no evidence to show about the strike in 1975 and stated that all papers were lying with the said Corporation. He had to admit that although he filed an information against the loss of the identity card, but no such information was lodged against the loss of the permit slip and he has not asked for a copy of the same from the said Corporation, although the same was said to be available with them. The Union subscription receipts as produced by him, were not of the relevant period and like others, he has stated that apart from those union subscription receipts, he has lost all other receipts and had no document to establish such loss. He admitted, not to have asked for any copy of the lost receipts from the Union.

164. On comparison of the appearance of the workman along with photograph as produced, there appeared to be some resemblance, but even then, because of some inconsistencies as indicated in his evidence and affidavit and on considering them along with the evidence of WWs 1, 3 and 4 I feel that this workman also, has not been able to bring his case within the four corners of the considerations, with regard to residence and identity, in terms of the observations of the Hon'ble Supreme Court of India.

165. The workman WW-189 could not produce his Identity card. But to establish his identity and workings with the said Corporation, he has produced a certificate from one Dharendra Kumar Banerjee, Ex. Depot Incharge, N.J.P., G.F.D., dated June 16, 1990. The certificate of the said Shri Banerjee was admittedly not in any Form of the said Corporation or with their seal. It also appeared from the certificate that the said Shri Banerjee happened to know the employee concerned, as at the relevant time to his appointment in 1975, he was the Depot Incharge, Shri Banerjee has further stated to have attested the photograph and specimen signature of the employee concerned, but there is admittedly no signature of the employee in the certificate and only his I.T.I. is available. The employee has also produced another certificate from Bejoy Dey, Commissioner Ward No. 29, for the purpose of establishing his stay at Siliguri for a long time. With this certificate also he has annexed a photograph. The two photographs were same and they had clear resemblance with the appearance of the employee, who deposed. The evidence of the employee regarding his age and permit slip, were not convincing. In fact, he stated that it would not be possible for him to identify the signature of Paul Babu, who was claimed to have signed the Permit Slip in his presence and he had also put in his I.T.I. in the presence of the said Paul Babu. To establish his residence, the witness has further produced his Ration card, which was admittedly a duplicate one and was dated August 14, 1990 and the same did neither bear his signature nor his I.T.I. From the certificate of Bejoy Babu and the Ration card, even though it can be said that the workman was staying at Siliguri for a long time, but they will not establish his employment with the said Corporation. He also produced two Union subscription receipts, none of which were of the relevant period and like others, he has said to have lost the other subscription receipts. He could not produce any document to establish his employment from 1973 to 1975 under Direct Payment System with the said Food Corporation of India. But, he relied on payment sheets and stated, they are lying with the said Corporation and he has not asked for the copy of the payment sheets although there was an earlier order for production of such records made on..... He has said that his Union, asked for those copies, but such fact could not be established by him. He could not also say what were the contents of the payment sheets. He has said to be staying in a shanty on Railway lands, which has of course not been mentioned by the Municipal Commissioner in his certificate. His statements regarding the inclusion of his name in the list of 464 employees were based on hearsay. Like many others, it was also his case that he has lost the permit slip. He admitted to have obtained the certificate from Bijoy Babu, since, he required the same for deposing in this case. He was from Ward No. 28 of the Municipality and the Commissioner of that Ward was Sanjib Sarkar and he said that Sri Sarkar was not well, so he has got the certificate from Bejoy Babu. It was also his evidence that Dhiren Babu gave him the

certificate without consulting any official records and he has not approached the present officials of the said Corporation, for the said certificate. Further findings on the certificate of Dhiren Babu will be indicated hereafter. The inclusion of the name of the workman in the list of 464 employees, appeared to be based on hearsay. The evidence of this witness appeared to be false and full of inconsistencies.

166. The workman WW-190, who has not produced his identity card, has also produced, like workman WW-189, two certificates, one from Dhiren Kumar Banerjee and the other from Bejoy Day. He has also affixed two photographs in the two certificates, for establishing his employment and identity but unfortunately, those two photographs differed in all other respects. My findings in respect of the certificate of Shri Dharendra Kumar Banerjee, will be the same as in the case of WW-189. It should be noted that although this workman was the resident of Ward No. 18, he got the certificate from Bejoy Babu as mentioned above, who was the Commissioner of Ward No. 28. Since the two photographs as produced differed, I feel it difficult to find that he has been able to establish his identity duly and in any event, I keep it on record that even then the certificate as produced from Bijoy Babu, would not ensure to his benefit, for the purpose of his employment with the said Corporation. I further feel that, the defects as pointed out in respect of the certificate of Dhiren Babu in respect of WW-189, will apply with equal force in this case and the same cannot be relied upon, for his employment in the said Corporation. Like others, this witness has also said to have lost the permit slip, as received from Paul Babu and he could not also identify the signature of Paul Babu. He has also produced the duplicate copy of his Ration card and that too, without his signature or I.T.I. and also two other Union subscription receipts, not of the relevant time. I think that even the Ration card or the two receipts, will not establish his employment with the said Corporation. The said Ration card, read along with the certificate of Bejoy Dey, may at best establish his stay at Siliguri and nothing else. His evidence regarding the inclusion of his name in the list of 464 employees, was based on hearsay and his evidence regarding his age was also discrepant. This witness appeared to be not truthful and inconsistent too.

167. The workman WW-191 has not produced his Identity card, but to establish his identity in respect of employment and stay at Siliguri, he has produced a certificate from Dharendra Kumar Banerjee and Sri Bijoy Dey. My findings in respect of the two certificates as indicated in the case of WW-190 will apply with equal force in this case. It should be noted that as indicated in the case of WW-189, Dhiren Babu's certificate contained the similar defects. With the two photographs as produced and the appearance of the workman who deposed, there appeared to be some resemblance. But, his evidence regarding age suffered from the same defects as WW-189 and WW-190 and Bejoy Babu's certificate, so also the Union receipts as produced, could not establish his case of employment with the said Corporation. Bejoy Babu's certificate, may at best establish that he was a resident of Siliguri. He has said to have lost his identity card, but for such loss, he has not lodged any information to the Police Station or informed the said Corporation about such loss. In his evidence, he wanted to make out a new case that the fact of receipt of the identity card was entered in the books of the said Corporation. The certificate of Dhiren Babu had the same defects, as pointed out in the cases of WW-189 and WW-190. He was not in a position to recognise the signature of Paul Babu. The Ration card as produced by him, was also a duplicate and without his signature or I.T.I. The said card, in my view, may at best establish his stay at Siliguri, but will not establish his workings under the said Corporation. Although he was a resident of Ward No. 20, Bijoy Babu Commissioner of Ward No. 29 gave the certificate. He could not disclose any evidence that he worked with the said Corporation from 1972, excepting the certificate of Dhiren Babu, showing him working from 1973 to 1975, but for the views which I have indicated earlier in respect of WWs. 189 and 190, I think the said certificate of Dhiren Babu will not be of any help or assistance to him. He stays on Railway land, but Bejoy Babu's certificate is silent on that point and he has also stated to have taken the certificate from Bejoy Babu, as Commissioner of his Ward, was

not available, since he has become a Minister. The evidence of this Witness also appeared to be inconsistent.

168. The workman WW-192 did not produce his Identity card, but like the earlier workmen, he has produced a certificate from Dhiren Babu, for showing his employment with the said Corporation and a certificate from Bejoy Babu, for establishing his stay at Siliguri. Along with the certificates, two photographs with some dissimilarity and which were taken in 1990 and more particulars, the one affixed to Bejoy Babu's certificate was taken in the later part of 1990, was annexed. Photographs in the certificates appeared to have no resemblance with the witness and unfortunately on a plain look on L.T.Is. of the two certificates, there appeared to have discrepancies. My findings in respect of Dhiren Babu's certificate, nature and character of the same as indicated in respect of the earlier workmen, will be the same. This witness could not testify the signature of Paul Babu. His case was that he received payment on signing payment sheets, but such fact has not been duly brought home. The certificate of Bejoy Babu as indicated in the cases of earlier workmen, may only establish his stay and not his employment with the said Corporation and similar will be the position in respect of the duplicate Ration card as produced by him, which was also without his signature/L.T.I. Drawings as indicated on a pasting at the back of the Ration Card, were also not very convincing. The two union receipts as produced, I think, will not also establish his employment with the said Corporation and they may at best show that he was a member of the said Union. But, there is no evidence of his membership of the said Union for the relevant period. His case was that he has lost all the other receipts. It appeared that there was no resemblance of the witness with the two photographs as produced. In consistency is a part of the deposition of this witness.

169. The case of WW-193 cannot have a better answer than the cases of earlier workmen. He has not produced his Identity Card, but like others, he has produced similar certificates from Dhiren Babu, with the same defects as pointed out. That certificate, I find, will not be of any help or assistance to establish his employment with the said Corporation at the relevant time and that too, in view of the character of the said certificate. Although in his affidavit, the witness has mentioned to have lost his father, Dhiren Babu's certificate is silent on that point. But, Bijoy Babu, whose certificate will not be of any help or assistance to establish his employment and which can at best establish his residence at Siliguri, has indicated that his father was not alive. This witness has not also been able to identify the signature of Paul Babu and on a plain comparison of the L.T.Is of the two certificate, it would appear that they were differing. The demeanour of this witness, who was a resident of Ward No. 18 and got the certificate from Bijoy Babu, commissioner of Ward No. 29, appeared to be not very convincing and the manner in which the photograph in the certificate of Bijoy Babu has been affixed, shows suspicion or the affixation of the same has been made at later stage. He has stated in his affidavit that one Jibanandi Banerjee gave the Identity card, which he has lost, but for that, he has not lodged any diary. His evidence regarding age was not only discrepant, but the same was not convincing too. He has not produced any ration card, but has produced 3 Union receipts, one of which was of course of the relevant period. But, even the production of such receipts, will not establish his employment with the said Corporation. Shanti Chakraborty, a Commissioner of Ward No. 18, in which this witness stays, has not issued the certificate, although in many cases, he has issued such certificate and the present certificate has been obtained from Bijoy Babu, for the reasons as indicated in the evidence, which I feel is very difficult to believe. The witness could not identify the signature of Paul Babu in the permit slip and like others he has said that he has lost the same. Excepting the certificate of Dhiren Babu, there is no evidence of his workings with the said Corporation in 1970 or from 1973 to 1975 and for the purpose of establishing his workings, he has said to have received payment on signing on payment sheets, which were not produced. It appeared that there was no resemblance of the witness with two photographs as affixed. Much more consistency in the evidence was needed.

170. The workman WW-194 has not produced his Identity card, but to establish his employment under the said Corporation, he has produced same and similar type of certificate from Dhiren Babu, with the same defects and character. My findings in respect of the certificate of Dhiren Babu as made in respect of WWs. 189 and 190 earlier, will apply in this case. To establish his residence he has produced a certificate from his Ward Commissioner Bijoy Babu and that certificate as indicated earlier, may at best establish his stay at Siliguri, but not his employment with the said Corporation. Apart from the above, he has produced duplicate copy of a Ration card without the signature or L.T.I. of the holders and showing him as the Head of the family. Although, it was his case that all the Ration card holders do not form a family, he claimed himself to be the Head of the house and it was his evidence that other 5 ration card holders were from Bihar and they have got their ration cards there. It appeared that although 6 ration cards were produced, rations were drawn only in one card i.e. of Jageswar Sahani and it was his evidence that such drawings were allowed, although other 5 holders were not the members of his family. He deposed that if a ration card is taken, no ration will be delivered. He could not establish his source of his knowledge regarding the drawings of ration in one card as stated by him and it was his case, for issue of ration card, no application is necessary and the officers come to the house and on enquiries, cards are given. It appeared that he was a self appointed Head of the family. He could not identify the signature of Paul Babu in the permit slip, although he claimed that Paul Babu signed in his presence. Regarding the ration cards or the drawings through them, which were claimed to be group ration cards and even though the 6 card holders were living in separate shakties, the case as sought to be made out in the affidavit and evidence, were discrepant. As mentioned by me earlier Dhiren Babu's certificate will not help him to establish his residence, but not his service with the reasons as indicated, so also the nature and character of the certificate and Bijoy Babu's certificate will at best, establish his residence, but not his service with the said Corporation. The Union subscription receipts as produced will have the same fate like that of Bijoy Babu's certificate and the evidence of the witness regarding his age, was not convincing. The witness had some resemblance with the two photographs as produced with the said two certificates. The photographs as produced were admitted to have been snapped 2 years ago and it was his specific evidence that although there were other officers, he went to Dhiren Babu, as he worked under him and as such, he was known to him. The deposition of this witness appeared to be false and inconsistent.

171. The workmen WW-195 has not also produced his Identity card and like other earlier workman, he has produced a certificate in the similar form and with the same defects as mentioned earlier, issued by Dhiren Babu. The findings in respect of the certificate of Dhiren Babu as indicated earlier will apply with equal force in this case. His evidence regarding permit slip was far from being satisfactory and he was not in a position to identify the signature of Paul Babu. He has also lost, like others, his permit slip and has not lodged any information to the Police Station. It was his further evidence that at the time of issue and execution of the permit slip, Deo Prasad and C.I.S.F. personnel were present. This is certainly an improvement sought to have been made by him. His evidence regarding age, suffers from the same defects like other workmen. To establish his stay at Siliguri, he has produced a certificate from Shanti Chakraborty, Commissioner of Siliguri Municipality and so also a duplicate of Ration Card, without his signature or L.T.I. and as indicated, even those two documents are true and correct, they will not go to establish in any way that he was employed under the said Corporation. The photographs as produced, have little resemblance with the appearance of the witness, but, I shall indicate hereafter, why those photographs would not be enough to establish the identity at the time of his termination or employment, with the said Corporation. He has of course agreed that he received the ration card few days ago than the date when he affirmed the affidavit. He further agreed that he had no document to show, excepting the certificate of Dhiren Babu, that he worked under him. He further agreed that after he worked in 1975, he did not work in the said Corporation and his evidence regarding inclusion of his name

within the 464 employees was no better than hearsay. He also stated not to have said that Shanti Babu knew him or he knew Shanti Babu. The Union receipts, as produced, excepting one of 1974, will not be enough to establish his membership of the said Union at the relevant time. The entries in the Ration card appeared to be irregular and his demeanour in Court, was far from being satisfactory. It appeared that his deposition was not true and was full of inconsistencies.

172. The workman WW-196, has not also produced his Identity card, but to establish his identity and employment under the said Corporation, he has produced a certificate from Dhiren Babu, with the name defects as indicated hereinbefore and the said certificate was also in the same format. I shall indicate hereafter, why the certificate of Dhiren Babu cannot be relied on for the employment of this workman in the said Corporation. at the relevant time. His evidence regarding age was not at all satisfactory and to establish his stay at Siliguri, he has produced a certificate from Bijoy Babu, Commissioner, Siliguri Municipality and also the duplicate ration card, without his signature and L.T.I. As indicated hereinbefore, these type of evidence would not be enough and sufficient to establish his employment with the said Corporation. They may at best establish his stay at Siliguri. While on the certificate of Bijoy Babu, it should be noted, although the workman was a resident of Ward No. 9 he got the certificate from Bijoy Babu, who was the Commissioner of Ward No. 29 and Sri Ramkumar Agarwala was his Ward Commissioner. He has given similar explanation as to why the certificate was obtained from Bijoy Babu. The drawings as indicated on the back of the Ration Card, would not inspire any confidence. This witness has also not been able to identify the signature of Paul Babu, and it was his case like others that he has lost that slip. He could not also establish his knowledge about the inclusion of his name within the 464 employees and such evidence was really based on hearsay. It was his evidence that from 1973 to 1975, he worked under the Direct Payment System and those papers were lying with the said Corporation. The Union receipts as produced by him, will not establish his membership of the said Union for the relevant period and so also his employment with the said Corporation. There was no resemblance in the appearance of the witness with the two photographs, which he has annexed and produced now.

173. The workman WW-197, has not also produced his Identity card and like others, to establish his identity, he has produced a certificate from Dhiren Babu in the same format and with the same defects as indicated earlier. I shall deal with the effect of the certificate of Dhiren Babu hereafter. To establish his stay at Siliguri, he has produced a certificate from his Ward Commissioner Bejoy Babu and so also a duplicate copy of the Ration card, without his signature or L.T.I. But, I feel that those evidence may establish his stay at Siliguri and not his employment with the said Corporation. Although the witness claimed to have received a permit slip from Paul Babu, signed in his presence and also with his L.T.I., affixed in the presence of Paul Babu, yet he could not identify the signature of Paul Babu. There was admitted use of different ink in the certificate of Dhiren Babu. His evidence regarding age was discrepant like others and he could not also establish his service under the said Corporation for the relevant period. He has ofcourse stated that while under Direct Payment System, he signed on the payment sheets and he had to agree that his statements regarding containing his name in the payment sheets, were after hearing. Either the ration card as produced or the certificate of Bijoy Babu, in my view, has not established his employment with the said Corporation. On comparison of the two photographs as affixed in the certificates, there appeared to be some little resemblance. But, taking the total effect of the evidence as tendered, I think that they were and are far from being real, and the evidence of the witness was far from being true and was also full of inconsistencies.

174. The workman WW-198, has not produced his Identity card, but to establish his employment with the said Corporation, he has produced a certificate from Dhiren Babu in the same format and also with the same defects as indicated earlier. I shall indicate hereafter, why the said certificate of Dhiren Babu cannot be considered as evidence of his employment with the said Corporation, at the relevant

period. It should also be noted, there were evidence of use of different ink in the certificate of Dhiren Babu. He has produced the certificate of the Municipal Commissioner Shanti Chakraborty and so also duplicate copy of the Ration card, without his signature or L.T.I. Those evidence may enure to his benefit to establish his stay at Siliguri, but they will not certainly establish his employment with the said Corporation at the relevant time. The Ration card as produced and in the manner the entries therein have been made appeared to be doubtful. This witness has said about the permit slip and execution of the same by Paul Babu in his presence and so also affixation of his L.T.I. in the presence of Paul Babu. He could identify the signature of Paul Babu in Ext. M-6. If in Ext. M-6 there was a real signature of Paul Babu then his evidence on the point could be accepted, but is it not strange that although he could recognise the signature of Paul Babu, he could not recognise the signature of other persons known to him and as shown. His evidence regarding age, suffered with the same defects like other earlier workers. The Commissioner's certificate and the Ration card will perhaps establish his stay at Siliguri, but that would not establish his employment in the said Corporation. Although the workman has said about Direct Payment System, but there was no convincing evidence, to rely on such evidence, as the same was made by him without due proof. On a comparison of the appearance of the witness with the photograph as affixed with the certificate, it appeared that there was no resemblance. The evidence appeared to be inconsistent.

175. Like others, WW-199, has not produced his Identity card, but has produced a photograph affixed with the certificate of Dhiren Babu, in the same format and with the similar defects as pointed out earlier. I shall deal with the effect of the certificate of Dhiren Babu hereafter. This witness could not identify the signature of Paul Babu, although he claimed that he signed in his presence. To establish his stay at Siliguri, he has produced 6 duplicate copy of Ration Cards, of which 4 were signed by Shanti Chakraborty. It is very difficult to agree that Shanti Chakraborty, a Commissioner of the Municipality had the authority to issue such Ration cards. In fact, in the card of Joynarayan Paswan and so also in that of W. Paswan and Promode Paswan, the seals of Siliguri Municipality were apparent. In one ration card, the front portion of which was not legible, the witness agreed that the pasting at the back, was made by him. This witness was hard of hearing and in the manner and form, the certificate has been produced, it is apparent that the same was typed earlier and after typing, blanks were filled up by hand. It was the evidence of the witness that he lost his card photograph in April 22, 1979 and for that he lodged a diary to the Police Station. The diary was in Hindi and the English translation thereof has been filed, without ofcourse showing the seal of the Police Station and it was his evidence that the said G.D. was not written by him, but the same was written by one Shant Lal Sahani. This Sahani has not been examined and the witness could not also say, about the date of his L.T.I. in the G.D. Form the contents of the GD even, it cannot be inferred that the card in question was issued by the said Corporation. To establish his stay at Siliguri, apart from the Ration cards, whose particulars have been mentioned earlier, a certificate from Shanti Chakraborty, Municipal Commissioner of Ward No. 18, although the workman was staying at Ward No. 20, has been produced. This certificate of Shanti Babu, as it appears, was typed and thereafter, blanks were filled up in hand. The explanation, why the certificate was obtained from Shanti Babu, can be accepted. The evidence of the witness regarding his age, suffered the same defects like the other workmen as indicated. The certificate of Shanti Babu and the ration card, in my view may at best establish his stay at Siliguri, but not his employment with the said Corporation. The witness was not also in a position to identify the signature of Paul Babu. His appearance, on being compared with the two photographs, appeared to have some resemblance. But his evidence was not very consistent.

176. Like others, WW-200 has not produced his Identity card, but to establish his employment with the said Corporation, he has also produced certificate from Dhiren Babu, with the same defects as indicated hereinbefore. I shall indicate hereafter, why such certificate, cannot be relied upon. He was not in a position to identify the signature of Paul Babu in the permit slip. To establish his stay at Siliguri, he has also produced a certificate from the Municipal Commissioner Bejoy Dev and so also a duplicate copy of the Ration card, without his signature or L.T.I. These

two documents, in my view, can at best establish his stay at Siliguri, but not his employment with the said Corporation. In the certificate of Dhiren Babu, there are evidence of over writings and use of different ink. He has stated that papers relating to his employment with the said Corporation were lying with them and for those papers, demand was made by the said Union. Unfortunately, there was no appropriate evidence to establish such fact. Although the workman was a resident of Ward No. 20, he has obtained the certificate from Bijoy Babu, Commissioner of Ward No. 29. His evidence regarding age, which he has testified to have heard from his uncle not only discrepant, but such fact of hearing from the uncle has not been established. As indicated earlier, he was not in a position to identify the signature of Paul Babu. It should also be noted that no appropriate evidence has been tendered to establish his employment with the said Corporation at the relevant time. On comparison with the appearance of the witness with the photographs as produced, there appeared to be clear resemblance. Even then, there is no room for doubt that his evidence was not consistent with the statement in his affidavit.

177. The workman WW-201 has not produced his Identity card, but like others, to establish his employment with the said Corporation, he has produced a certificate from Dhiren Babu in the same format, with the same defects and use of different ink as indicated earlier. I shall indicate hereafter, why that certificate cannot be relied upon, to establish his employment with the said Corporation. To establish his stay at Siliguri, he has produced a certificate from Bijoy Babu, Commissioner of his Ward and so also a duplicate Ration card, without his signature or L.T.I. These records in my view, will at best establish his stay at Siliguri, but will not establish his employment with the said Corporation at the relevant time. The certificate of Bijoy Babu was in the same store type format like many others and it is apparent that blanks in the certificate, were filled in by hand, after the same was typed. That certificate, so also the Ration card will not certainly establish his employment with the said Corporation but they may, as indicated, at best, establish his stay at Siliguri. The workman, in his affidavit has stated that his father was not alive, but the Ration card, which was issued on April 7, 1990, mentioned his father to be alive. I have already indicated about the character of Bijoy Babu's certificate. The workman could not identify the signature of Paul Babu, although the signature in Exhibit M-11 was shown to him. Like others, he has also said to have lost the permit slip. The Union receipts as produced, exception one, will not establish his membership at the relevant period and practically, nothing turns on that in respect of his employment in the said Corporation. On comparison with the appearance of the workman along with the photographs as produced, it would appear that there was no resemblance. His evidence appeared to be not free from discrepancies.

178. The workman WW-202 has produced his Identity slip bearing No. WW-1/187, which was issued on May 4, 1978 so also a xerox copy of permit slip, said to have been received from Paul Babu with his L.T.I. given in his presence. He has also stated that Paul Babu signed the said slip in his presence. On comparison, the appearance of the witness, with the photograph in the Identity card, there appeared to be no resemblance and not only the said photograph, but also the manner in which the same has been pasted, and also the writings in that card, are worth to be looked into and on consideration of such facts, the Identity card appeared to be not conclusive proof of his employment. The signature of Paul Babu as shown in the xerox copy of the permit slip also appeared to be difference from his admitted signatures as indicated hereafter and having different number of strikes. For the purpose of establishing his stay at Siliguri, the workman has produced, not only a certificate from Sri Rahn Paul, Commissioner Siliguri Municipality, but also his Ration card, which is the xerox copy, without his signature or L.T.I. and in the Ration card, the Head of the family has been mentioned as R. Mahato. The certificate of the Commissioner and as also the Ration card, in my view, may at best establish his stay at Siliguri, but not his employment under the said Corporation. That apart, the certificate of the Commissioner, which was dated February 7, 1992, testified that the workman was presently residing at Siliguri and not for any earlier period. The subscription receipts as produced, were also not of relevant period and like many others, he has said to have lost many of the receipts. In

any event, these receipt in my view, will be of little help and assistance in the matter of establishing his employment with the said Corporation. The Head of the family R. Mahato as mentioned in the Ration card, was admitted by the workman as Rajendra Mahato and he was not a member of his family. He could not also say when he drew ration last and according to him, the said Rajendra Mahato goes to draw ration. It was his further evidence that 7 people including himself, was staying together in different rooms and apart from the Ration card, he had no other evidence to establish that those 7 people, constituted one family. Although he produced the permit slip with the paper affixed at the back of the same, since the same was said to have been damaged, he could not mention, what were the contents of the permit slip. His evidence was that, he drew payment on signing payment sheets. He further stated that he was known as Ghuran Sahani No. 11, but it appeared that in his affidavit he has not mentioned him as such. The photograph in the identity card was with stains and water marks and he stated that the identity card contained the signature of Dutta Babu. But, he could not identify the signature of Dutta Babu. For the views as expressed by me earlier, in respect of those identity cards as issued by Dutta Babu and on the basis of the evidence of Deo Prasad (WW-1) and Dutta Babu (WW-2), it is very difficult to place any reliance on this identity card, which was produced by the said Union and more particularly when, the witness could not establish by any legal evidence, to show that he gave the identity card to the said Union, for production. His evidence regarding inclusion of his name in the list of 464 employees, was also based on hearsay. He could not produce any record to show his employment with the said Corporation since 1972 and he was not specific about his statement in the affidavit, regarding employment from 1973 to 1975 under Direct Payment System or what statements he made to his lawyer for incorporation of such fact in the affidavit. Like many others, he could not mention the name of in 7th month of the year, although he stated that he was terminated on 21-7-1975 and he was also not in a position to produce any document showing that he worked for 4 months in 1978. It was his evidence that although he was staying at Siliguri from 1972 to 1989, he had no document to establish such fact and considering this statement, along with the certificate of the Commissioner as produced, it cannot be found that he was staying at Siliguri from 1972 to 1989. There was some discrepancy regarding the Post Office, where the witness was staying as stated in his evidence and the certificate of the Commissioner. On comparison with the present appearance of the witness with the photograph, there appeared to be no resemblance.

179. The workman WW-203 has not produced his identity card, but to establish his identity and employment with the said Corporation and his stay at Siliguri, apart from the xerox copy of the Ration card which was without his signature or L.T.I. he has produced, a certificate from Dhiren Babu in the same format and with the some defects as pointed out in the cases of WW-188 and WW-189 and others. The photograph as produced with the certificate, differed from the appearance of the witness and I find, there has been no resemblance. About the quality and character of Dhiren Babu's certificate I shall have my further views indicated later. The certificate of Bijoy Babu and so also the Ration card, may at best establish the stay of the witness at Siliguri. But, they will not in any event establish that he was employed with the said Corporation. The certificate of Bijoy Babu, as usual, was with the blanks filled up after typing and the ink used in Dhiren Babu's certificate also, differed. The workman was not in a position to identify the signature of Paul Babu in the permit slip, although he claimed that he signed the same in his presence and he in his turn, affixed his L.T.I. in the presence of Paul Babu. The fact that Bijoy Babu's certificate was kept ready with blanks, will appear from the manner in which the word 'Sri' before the name of the father of the witness, has been scored through. The evidence of this witness regarding his age was discrepant like others. Although he testified regarding the character and contents of Bijoy Babu's certificate, to be true. Like others, he has also said to have lost the permit slip and was not in a position to name the 7th month, although he has stated to have been terminated on 21-7-1975. He was not able enough to agree that his statement regarding inclusion of his name in the list of 464 employees was on hearsay. There appeared to be no resemblance of the workman with his present appearance and the photographs as produced.

180. The workman WW-204 has not produced his identity card, but to establish his identity of employment, he has produced a certificate from Dhiren Babu in the same manner, format and defects as indicated earlier. This certificate, like earlier one, also contained the writings in different ink and the witness himself stated that he has not signed in the certificate. He has then produced, Union receipts, a certificate from Bijoy Dey, Commissioner of Ward No. 29, although he was the resident of Ward No. 20. This certificate of Bijoy Babu was issued in the same manner and character and defects as mentioned in the case of WW-203 and others and I feel that this certificate and so also the Union receipts as produced, will not establish his employment with F.C.I. at the relevant time, but at best they can establish his stay at Siliguri and similar will be the position in respect of the duplicate copies of the Ration cards as produced by him, without signature or L.T.I. It should be noted that the Ration card of Shri Latu Ray as produced by him, was issued by Shanti Chakraborty, the Commissioner, without any date. I was not shown any authority of Shanti Chakraborty, to issue such card as Commissioner of the Municipality or on their behalf. In any event, the drawings as shown at the back of the Ration card will not inspire any confidence, for the purpose of establishing the genuineness of them. This witness was also not in a position to identify the signature of Paul Babu in the permit slip, although he claimed that the same was signed by Paul Babu in his presence and he affixed his L.T.I. in the presence of Paul Babu. It was the further evidence of the witness that he along with 9 others, although were staying under the same roof, but were separate in mess. It was also his evidence that the Ration cards as issued were group ration card. He has further deposed that although he has not asked for a copy of the permit slip, which was lying with the said Corporation, his Union has asked for that. Ofcourse, there is no legal evidence to establish this. He has said to have drawn on the basis of Payment Sheets, but could not produce them or got them produced. His evidence regarding his age was discrepant like others. He has admitted to have been staying in the shanty belonging to Natho Roy, who was not the owner, of the land, but used to collect charges from him. If that is so, it is very difficult to visualize, how, he is a member of the same family. He could not also identify he signature of Dhiren Babu in the certificate and stated that he had nothing to show that he had worked under Dhiren Babu. On a comparison of the appearance of the witness and the two photographs as produced, there appeared to be little resemblance.

181. The workman WW-205, who has not produced his identity card, but appeared to be constituting the same family with WW-204 and Natho Roy. To establish his identity of employment, he has produced similar certificate from Dhiren Babu, in the same format and defects and with different ink, like other employees. I shall indicate my further findings on this certificate hereinafter. To establish his residence, he has produced certificate from Bijoy Babu, Commissioner of Ward No. 29 although he himself was residing in Ward No. 20. The Certificate of Bijoy Babu suffered from the same defects as indicated earlier and the way and manner in which that certificate was issued to many others, will leave no room for doubts that the certificate with necessary blanks, which were filled in later, was typed earlier. One of the duplicate copy of the ration card as produced, bore the signature of Shanti Chakraborty, as issuing authority. I have indicated earlier the doubts regarding the character and capacity of the said Shri Chakraborty, to issue such Ration card. The Ration cards also had no signature or L.T.I. In any event, they will not establish the employment of this witness under the said Corporation at the relevant time. The Union receipts as produced were also not of the relevant period and like others, he has also said to have lost earlier receipts. He could not identify the signature of Dhiren Babu or the signature of Paul Babu in the permit slip, although he has made similar statements like others, not only regarding the execution of the same, but also the fact of losing the permit slip. Bijoy Babu, in his certificate has shown the father of the witness to be alive, whereas he in his affidavit, he has said that his father was not alive. His evidence regarding age was not convincing, but that was contradictory. Although he has said to have received payments on signing the Payment sheets, yet he could neither produce nor make them produced. On a comparison of his appearance with the photograph as produced, it appeared, there was no resemblance.

His evidence was discrepant in many respect than the statements made in the affidavit.

182. The workman WW-206 has not produced his Identity card, but has produced a certificate from Dhiren Babu in the same manner, character and with the same defects as indicated earlier. Further findings on Dhiren Babu's certificate will be indicated hereinafter. To establish his stay at Siliguri, apart from producing a stereo type certificate from Bijoy Babu, with the same character as earlier, he has produced a duplicate copy of the Ration card without his signature or L.T.I. He produced his permit slip which was marked as W-7, but strangely enough, he could not recognise the signature of Paul Babu there. Although he affirmed the affidavit on February 25, 1992 and deposed two days thereafter, there were great changes and discrepancies in his statement. The Union receipts as produced, were not of the relevant period and like others, he has said to have lost other receipts. The photographs as produced with the certificate, not only differed, but his appearance with the photograph also showed that there was no resemblance.

183. The workman WW-207 like earlier workman, has produced, for establishing his employment with the said Corporation, certificate from Dhiren Babu in the same format, with the identical character and in different ink. Further findings on this certificate will be indicated hereinafter. To establish his stay at Siliguri, he has produced a hand written certificate from Bijoy Babu, a Commissioner of Ward No. 29, although he himself was a resident of Ward No. 9. The commissioner whereof, was one Shri Agarwal. The ration card as produced was also without his signature or L.T.I. and his evidence regarding the same was not very convincing. He could identify the signature of Paul Babu in Ext. M-11, but could not identify the signature of Deo Prosad, although he identified his signature in the affidavit, in the fourth sheet of that Exhibit. His evidence regarding age was discrepant like others and although he claimed to have received payment through payment sheets, he could not either produce them or get them produced. He could of course identify the signature of Dhiren Babu in his certificate, but agreed that he had not put his signature there, but affixed his L.T.I. He could neither establish his employment in 1972 nor from 1973 to 1975. On a comparison of the witness, there appeared to be some resemblance. The Union receipts as produced by him were also not of the relevant period. In any event, I feel there was no relevance of them in respect of his employment with the said Corporation. The evidence as tendered, appeared to be discrepant and inconsistent, with the affidavit.

184. The workman WW-208 also produced for his employment, a certificate from Dhiren Babu in the same format and similar defects and in different ink. Further findings on this certificate will be indicated hereinafter. To establish his stay at Siliguri, he has produced a hand written certificate from Bijoy Babu, Commissioner of Ward No. 29, although he is a resident of Ward No. 28. That certificate in my view, will not entitle him to claim that he was employed with the said Corporation at the relevant time. The duplicate ration card as produced by him, which was neither signed nor had his L.T.I. will also have the same fate at that of the certificate of Bijoy Babu in the matter of employment from the comparison of the appearance of witness in the two photographs as produced, there appeared to be no resemblance. He has also agreed that he has not subscribed his signature, but has affixed his L.T.I. in the certificate of Bijoy Babu. He has also not in a position to identify the signature of Paul Babu in the permit slip. His evidence was not very consistent with his affidavit.

185. The workman WW-209 has not only produced his Identity card, bearing No. W-1/163 without any photograph, but has also produced, the Identity card of his father, who is admittedly dead, bearing No. W-1/164, which was issued on May 5, 1973. It was his specific case that he and his father were employed together in the said Corporation and the Identity cards were received by them at the same time. Although he could not produce any photograph, other than the one annexed to his father's Identity card, he has also not established the signature of the father, as appearing in his card. He has ofcourse produced a death certificate of his father, which shows that he died on October 3, 1984. To establish his residence at Siliguri, he has produced a certificate from the Municipal Commissioner Shanti Chakraborty and so also a copy of the Ration card, without his signature or



L.T.I. and which was also issued by Shanti Chakraborty, with the stamp of Siliguri Municipality. I have earlier expressed my doubts about the authority of the said Sri Chakraborty, to issue such Ration card and in this case, the witness agreed that he had no knowledge, whether there was any other employee by the name of Shanti Chakraborty in the office of the Rationing Authority. At the top of the Ration card, there is evidence of pasting and that evidence also appeared at the back of the Ration card and the manner in which the relevant columns at the back of the same have been filled up, inspired no confidence. This Ration card and so also the Municipal Commissioner's certificate, may at best establish his stay at Siliguri, but, they will not certainly establish his character of employment under the said Corporation. It was his evidence that his father signed the identity card in his presence. Excepting such oral testimony, there was no other reliable evidence. He also agreed that apart from himself, there were and are other heirs of the father. It was his further evidence that the identity cards or permit cards were issued by Banerjee Babu. For the views which I have expressed earlier, in respect of the issue of such card by Banerjee Babu, which was sought to be proved and established by Shri Jana (WW-4), I think, no reliance can be placed on this part of the evidence. Regarding his employment and that of his father either in 1973 or in 1975 and for that, their employments in 1978, have not been duly established by any legal evidence. He has further stated that his father received a permit slip and that slip is lying with the said Corporation and he has not asked for a copy of the same from them. He has further stated that his father has lost the permit slip. He could not of course say exactly, when such loss occurred, but he agreed, no information was lodged with the Police Station for such loss. Then, he has of course agreed that he does not remember whether any permit slip was given to his father or that the copy of the same was lying with the said Corporation. It was his evidence that he and his father used to draw payments after affixing L.T.I. on payment sheets, but could not establish such fact, with cogent legal evidence. He has also not disclosed any document showing about workings under the Direct Payment System in 1973. Here, is a case, where Shanti Chakraborty has not only issued the certificate, but the Ration card was also issued under his signature. He has of course signed the certificate in English and the Ration Card in Bengali, but that was with the rubber stamp of the Municipality. In the Ration card, his father has been shown as alive, although he died in 1984 and the Ration card was issued thereafter. The evidence of the witness about his age and that of his father, was far from being satisfactory. Although it appeared that his father received the identity card dated May 5, 1978 and it was his evidence that he and his father received the identity cards on the same day, but he has said, not to be remembering the date of receipt of his identity card and it further appeared that in the said card, his Bihar address was shown. He also agreed that the Ration card was of 1984. Although the Ration card was of 1984, it is strange that first drawings therein, has been shown as in 1990. The evidence of this witness, not only is found to be inconsistent to his affidavit, but the same also appeared to be untrue. In any event, I put it on record that on the basis of the evidence as adduced, no determination in favour of his father is possible. His Identity card, without the photograph also appeared to have been issued on May 5, 1978, but in that card, neither his name nor his father's name or the address appeared. The card also did neither contain his signature nor L.T.I. The same also did not contain any permit number or any legible signature.

186. The workman WW-210 has not produced his Identity card. His evidence regarding age was absolutely discrepant and he could not establish by any documentary evidence, other than the certificate from Shanti Chakraborty, Municipal Commissioner and the duplicate of the xerox ration card that he was at Siliguri from 1972 to 1989. Shanti Babu was his Ward Commissioner, but in my view, his certificate will not establish his identity of employment with the said Corporation and for the manner and the way the entries in the Ration card, which was without any L.T.I. or signature, have been made, no reliance can be placed on the same. He could not produce any evidence regarding his employment with the said Corporation since 1972 or his employment under Direct Payment System from 1973 to 1975. His evidence about the inclusion of his name within 464 employees, was based on hearsay and he has said to have affirmed his affidavit on the asking of the Union leaders. Although he has

said to have received and lost the permit slip subsequently but information about such loss, was not given to the said Corporation and he has not asked for a copy of the said slip from them. He was candid enough to say that he cannot identify the signature of Paul Babu, who, he claimed, had signed the permit slip in his presence. His evidence regarding the receipt of the Ration card and the drawings of articles on the basis thereof, was very difficult to be believed. He was not even aware of the year, which is running now. He was not aware of the contents of the certificate of the Commissioner. But, he said that he has produced the same for the purpose of his identity and the photograph as affixed, was snapped in 1990. Regarding certificate of Dhiren Babu, he also agreed that Dhiren Babu had no authority to grant the same and if at all, such certificate should have been issued by the said Corporation, but he has not asked for the same, from them. It was his evidence that since he worked under Dhiren Babu, he approached him. Dhiren Babu's certificate is also not free from any doubt, for the same reasons as indicated earlier and the said certificate, admittedly contained different ink. It was also his evidence that the photograph in Dhiren Babu's certificate was snapped in 1990. Thus, on a plain calculation, it would appear that the said certificate, with the photograph, was obtained by him after about more than 12 years. The Union receipts as produced of the relevant period and I feel that they can at best, establish his membership of the said Union, but will not go in any way to establish his employment with the said Corporation. The evidence of this workman were not only false in many respect, but they were discrepant with his statements in the affidavit. On a comparison of the present appearance of the workman with the two photographs as filed, there appeared to be some resemblance.

187. The workman WW-211 has not produced his Identity card and he was not in a position to say, whether in his affidavit, he has said that he received the said card in 1978. Although he claimed to have lost the card, he could not establish that fact with any legal evidence and it appeared that he has not informed the said Corporation about that loss and it was not possible for him to recognise the signature of Datta Babu, who issued that card to him. Regarding the permit slip, it was also his evidence that he received the permit slip, but was not aware of the date, when he received the same or had lost the same. He was not in a position to mention the permit slip number, but stated that the same contained the seal of the said Corporation. But, these statements have not been mentioned by him in his affidavit. He also agreed that after such loss, he has not approached the said Corporation, for a copy of the slip, although the same was lying with them. He could not produce any evidence of his employment since 1972 with the said Corporation and claimed that they are lying with them, but he could not remember, whether he has made such statement in his affidavit. He could not also establish with any documentary evidence, his workings under Direct Payment System and claimed that those documents were lying with the said Corporation. He was also not in a position to say when in 1978, he was terminated. His only evidence was and that too without any legal evidence that for 4 months in 1978, he was employed in the said Corporation. His evidence regarding inclusion of his name in the list of 464 employees, was also based on hearing from Deo Prosad 5 years ago, but admittedly, he has not said such fact in his affidavit. His evidence regarding age and dates, were also full of discrepancies. To establish his stay at Siliguri, he, only produced the duplicate copy of Ration cards, claiming them to be cards issued "Batchwise" and has also named the holders of other cards and said they were and are staying in separate shanties. There was admittedly neither any signature nor L.T.I. of his, in the Ration card. The photograph which he has annexed with the certificate of the Commissioner, was admitted to have been snapped by him 3 years ago. This certificate as produced, in my view, will at best establish his stay at Siliguri, but not his identity as to employment. Although he claimed to be illiterate, but is it not strange that he was aware of the fact that such photograph or other photographs as affixed in the certificate of Dhiren Babu, may be of use, in establishing his identity. It was his evidence that Dhiren Babu's certificate was with a seal of FCI. Unfortunately, the certificate as produced, appeared to be without any seal of FCI and that, only contained at the top, the seal of the Notary, before whom the affidavit was affirmed. The certificate of Dhiren Babu also contained the same and similar characteristics like

his earlier certificate and the workman concerned, approached Dhiren Babu although he was not in service at that time, as he was staying at Deshbandhu Para. He agreed further that the papers relating to his workings with the said Corporation, were lying with them and not with Dhiren Babu and he has not asked for any certificate from the said Corporation. He said, if he require a certificate for employment, he will approach Dhiren Babu, as he knew him and since he has been terminated, why the present officers of the said Corporation, will grant him the certificate. At least, this showed that he was not that ignorant and illiterate as he claimed and pretended to be. His evidence regarding age, was full of discrepancies like others and the two Union receipts as produced, which were not of the relevant period, in my view, may at best establish his membership, but not his employment with the said Corporation. He could not also identify the signature of Paul Babu, although he claimed that he signed the permit slip in his presence and he also put his L.T.I. in the presence of Paul Babu. It is noteworthy to point out that although the holders of the Ration cards as produced by him, were staying in different shanties, he claimed them to be members of the same family. The evidence on the whole is not trustworthy. His evidence and statements in the affidavit were discrepant. On comparison with the present appearance of the workman with the 2 photographs as produced, there appeared to be some resemblance.

188. The workman WW-212 has not produced his Identity card and he was not in a position to say what was his permit slip number, but he has said to have received the same in 1975. On being shown Ext. M-11, he could identify the signature of Paul Babu. He stated that he knew Deo Prasad (WW-1), but he will not be in a position to identify his signature, if shown, although he said that in his Identity card, which was not produced, the signature of Deo Prasad was there and he signed that in his presence. His Identity card was said to have been issued by Dutta Babu (WW-2) and he could identify his signature, but on being shown the Identity Card No. W-1/119, containing the signature of Dutta Babu (WW-2), he could not identify the same. It was his evidence that he had no document to show that he got the permit slip in 1975 and 9 years ago he realised that he has lost the same, but in spite thereof, he has neither lodged any diary nor informed the same to the said Corporation or has asked for a copy of that slip from them. He could not also mention the date when in 1978, he received the Identity card and he was not in a position to say about the number of the Identity card. In his affidavit, he has also not said about the loss of the Identity card, although that was his evidence. He could not produce any document to establish such loss or the fact, whether he has informed about such loss to the said Corporation. The Union receipts as produced, in my view will not be of any help to him, to establish his case of employment with the said Corporation. They may at best, in my view, establish his membership. Out of the 3 receipts, produced, one was of the relevant period, the other receipts, he has said, either have been lost or mislaid. His statement regarding inclusion of his name in the list of 464 employees, was based on hearing from Deo Prasad (WW-1) and the said fact, he has said to have heard 2 years ago. But, these facts, he has not mentioned in his affidavit. He could not produce any evidence regarding his workings in 1972 or from 1973 to 1975 and to establish that he worked under Direct Payment System. The affidavit was silent about the above fact, but he claimed that he told about such employment during 1973 to 1975 and he tried to draw by affixing his L.T.I. and these papers are lying with them, but he agreed that he never asked for copies of such papers. He could not also establish by any evidence, his four months workings in the said Corporation in 1978 and claimed that the papers are lying with the said Corporation. For his stay at Siliguri, he relied not only the Ration card, but also on a certificate from Bijoy Babu, Commissioner Siliguri Municipality. These evidence, even though are accepted, they may at best, establish his stay at Siliguri, but not his employment with the said Corporation. It was his case that the Ration cards were lost and on such, Suresh Jadav lodged a diary. But, Suresh Jadav's evidence was silent on this point. In the 4 duplicate cards as produced, there were only 3 entries in the card of this witness. He was not aware, what were the contents of the Commissioner's certificate and it was his evidence that the photograph as affixed therein and also in Dhiren Babu's certificate, were snapped 2 years ago and he gave the photo-

graph to Bijoy Babu, not on his asking, but, since he felt, the same will be necessary at the time of deposition, Dhiren Babu's certificate contained the identical and similar defects as pointed out earlier, apart from the fact that the same showed use of different ink. His evidence was discrepant from his affidavit and as such, was not very much trust-worthy yet, he agreed that papers in respect of his employment in the said Corporation should be lying with them, but he made the statements without the corresponding statements in the affidavit that since the said Corporation has not given him the certificate, he approached Dhiren Babu. He further agreed that he took the certificate from Dhiren Babu after 15 years, on hearing of the Supreme Court case and got his photograph affixed to Dhiren Babu's certificate, for establishing his identity, as he has lost his photograph along with that card. This conduct will not certainly establish his ignorant character, conduct and illiteracy. He has also said that from 1978 to 1992 i.e. for more than 14 years, his appearance has remained the same, which in my view, is very difficult to be accepted. The evidence of this witness, in my view, was not trust-worthy, not only for the views I have expressed but also for the fact that his evidence was not consistent with the statements in his affidavit. On a comparison with the present appearance of the witness along with the photograph as produced, there appeared to be no resemblance.

189. The workman WW-213, like others has not produced the Identity card, but has produced 2 photographs which were not of the relevant period, with the 2 certificates as produced. It was his evidence that Banerjee Babu gave him a certificate. By Banerjee Babu he meant Dhiren Babu. It was his evidence that Dhiren Babu signed the certificate in his presence and the whole of it was also written by him in his presence. He also agreed that he had no document to show that he worked under Dhiren Babu and he gave the certificate after hearing and not after consulting the records. He said that he got the said certificate in 1990 i.e. he obtained the same after 15 years of his termination and that too, since he felt that the certificate was necessary. He agreed that who are employed in F.C.I. would have the certificate from them, but still then, he procured the certificate from Dhiren Babu, as he was an old officer of the said Corporation. He further agreed that papers of the persons employed in F.C.I. would be lying with them. This certificate of Dhiren Babu, as usual contained the usual defects as mentioned earlier, apart from the fact that use of different ink for evident. But, he agreed that if he now requires a certificate for any employment elsewhere, he will approach the said Corporation, but in this case, he has not done so. The Union subscription receipts as produced, were not of the relevant period. Even such production, I feel, will not be of any assistance or help, for establishing his employment with the said Corporation and they may at best, establish his membership. The certificate of the Municipal Commissioner will not also establish his employment with the said Corporation and that may at best, establish his stay at Siliguri. It was his evidence that he produced the photograph with the certificate, for establishing his identity and he was candid enough to agree that before snapping of the 2 photographs as produced, he has not got snapped any photograph earlier. The xerox of the duplicate Ration card, without any signature or L.T.I., as produced, in my view, will not establish his identity of employment with the said Corporation and the same, at best will establish his stay at Siliguri. His evidence regarding age was discrepant. He was not in a position to identify the signature of Paul Babu, who, he has claimed to have issued the permit slip to him and which he has lost, but for such loss of the slip, he has not lodged any information to the Police Station or asked for a copy of the same. He, ofcourse ultimately said that he has asked for the copy, but the same was not supplied to him. But, such fact has not been mentioned in his affidavit and at last, he agreed that he did not ask for the copy from the said Corporation. He has claimed to have disclosed the documents showing his working with the said Corporation in 1970, but that was not correct. He could not establish by any legal evidence, his employment in F.C.I. under Direct Payment System from 1973 to 1975. On a comparison of the present appearance of the workman with the 2 photographs as produced with the affidavit, there appeared to be no resemblance and I further feel there were inconsistencies between the statements made in the affidavit and his evidence.



190. Like earlier workman, WW-214 has not produced his identity card, but has produced similar type of certificate from Dhiren Babu and I feel that the observations which I have made in respect of the earlier certificates of Dhiren Babu, will apply with equal force here, in this case, considering the nature and character of the certificate as issued. With the certificate of Dhiren Babu, a photograph has been annexed which was stated to have been snapped 2 years ago. The workman has also produced the Ration card, without L.T.I. or signature and a similar type of certificate from Bijoy Babu, the Commissioner of the Municipality. These two documents, in my view, will at best, establish his stay at Siliguri, but not his identity of employment with the said Corporation. The workman was a resident of Ward No. 28, whereas Bijoy Babu is the Commissioner of Ward No. 29. His evidence regarding age was discrepant like others and such evidence was inconsistent too. There was evidence of pasting of paper at the back of the Ration card. He could not establish his claimed stay at Siliguri from 1972 to 1989 or produce any documentary evidence to establish that since 1972, he worked in the said Corporation. He could not also produce any relevant documentary evidence, showing his working under Direct Payment System from 1973 to 1975. It was his evidence that he used to get payment on affixing his L.T.I. on the payment sheets, but such sheets, he has not produced or could have them produced from the said Corporation. His evidence regarding the inclusion of his name in the list of 464 employees, was based on hearing from Deo Prasad (WW-1). It was his case that after the strike in 1975, he got a permit slip, but like others, he has also lost the same and for such loss, he has not lodged any information to the Police Station or made a representation for a copy of the same from the said Corporation, although it was his case that such copy was available with the said Corporation. He could not also remember the signature of Paul Babu, although he was definite that he signed in his presence and he had affixed his L.T.I. in the presence of Paul Babu. The Union receipts as produced, were not of the relevant period and even if they were so, I think they would at best establish his membership, but not his employment in the said Corporation. It should also be noted that Dhiren Babu's certificate contained writings in different ink and according to his evidence, when Dhiren Babu issued the certificate in 1990, he was In-charge of the Office No. 6 of the said Corporation. This cannot be true. He candidly agreed that papers of persons, who have worked in the said Corporation, will be lying with them, but he has not asked for such certificate from the said Corporation and after 15 years, he has obtained the certificate from Dhiren Babu, for the purpose of this case. He was also certain that if he requires a certificate now, for his future employment elsewhere, he should approach the said Corporation. From the comparison of the appearance of the said workman with two photographs as disclosed now, it appeared that there was no resemblance. I feel that the evidence of this witness was not only false in material respects, but the same was discrepant too, in respect of many other aspects.

191. The workman WW-215 has not also produced his identity card, but he has produced a certificate with his photograph, from Dhiren Babu, with the similar defects and characteristic of such certificate, as indicated earlier. Although Dhiren Babu has certified to have attested the specimen signature and photograph of the employee, the certificate contained only his L.T.I. and writings of the certificate evidenced, use of different ink. It was his case that in 1978, he received the permit slip, which was earlier marked as W-5/3. Admittedly, in that exhibit, there was no L.T.I. of the workman. He claimed that the said permit slip was given to him by Banerjee Babu and he handed over that slip to the Union, with the pasting made at the back, by him. But, such statement, he has not made in his affidavit. In this case, the evidence of Deo Prasad (WW-1) can profitably be looked into and so also the evidence of Barindra Kumar Jana (WW-4) and it will appear that this Ext W-5/3 was issued by late J. N. Banerjee, but Shri Jana, while testifying to the signature of late Shri Banerjee, confessed that the same was not written by Shri Banerjee in his presence, but the hand writing was that of the said Shri Banerjee. For the views which I have expressed earlier, in respect of the evidence of WW-1, I think that this certificate has

also not been duly proved. Apart from this, there are instances, apparent from the exhibit, for which the same cannot be relied on or acted upon. Although he claimed to have worked for 4 months, in 1978, he was not in a position to remember the names of the said 4 months. He was candid enough to agree that it was not possible for him to recognise the signature of the signatories of the affidavit and he was not in a position to say, what he has said in the affidavit, regarding permit slip. It was his case that he received such slip from Paul Babu, on affixation of L.T.I. in his presence and Paul Babu also signed the same in his presence. Like others, he has also claimed to have lost the permit slip and has not also informed the said Corporation about such loss. He could not also identify the signature of Paul Babu. He has not produced any documentary evidence with the affidavit, showing about his workings in the said Corporation in 1972 or for his workings from 1973 to 1975, under Direct Payment System. He could neither give the particulars of the payment sheets, where, on affixation of L.T.I. he used to draw payment or could not have the same produced or make them produced. His evidence about inclusion of his name in 464 employees, was based on hearsay and he was not in a position to say from whom, he has heard such fact. The Union receipts as produced, were not of the relevant period. I feel, that they could have established his membership and not the fact of the employment with the said Corporation. He knew Deo Prasad (WW-1), but he was not in a position to identify his signature. He has also produced a duplicate copy of the Ration card and the certificate from Bijoy Babu, Municipal Commissioner, where his photograph is affixed. The photograph as affixed in the two certificates, were snapped at least one and half year ago and Dhiren Babu's certificate, contained writings in different ink. He agreed that papers of the employees of the said Corporation should be with them and he was not in a position to say, what post Dhiren Babu was holding in 1975 and he has taken the certificate from him, after such a long time, since his case was pending. His case was that he approached Dhiren Babu for the certificate, since he worked under him. Even if he was illiterate and ignorant he could realise that the photograph as affixed in the certificate of Dhiren Babu will be necessary, since he does not have the Identity card. His evidence regarding age and dates, were in the same line as earlier workmen. The Ration card was produced, without his signature or L.T.I. In my view that was of help of assistance to establish his stay at Siliguri only. On comparison of the present appearance of the workman, with the two photographs as annexed with the certificates, it appeared that there was no resemblance and his evidence was equally discrepant from the affidavit, like other workmen.

192. The workman WW-216 has not produced his Identity card, but has produced a certificate with the photograph from Dhiren Babu. The certificate of Dhiren Babu has the same characteristics and defects as pointed out earlier. He has also produced a certificate from Shanti Chakraborty, Municipal Commissioner and a xerox copy of the duplicate Ration card, without any L.T.I. or signature. This document, in my view, would at best establish his stay at Siliguri, but not his employment with the said Corporation at the relevant time. One of the Union receipts was of the relevant period and not others. Even if the Union receipts were of the relevant period that would at best establish the same thing, as I have mentioned in respect of the Ration card and nothing else. His evidence regarding inclusion of his name in the list of 464 employees, was made on hearing but he has not been mentioned the fact in the affidavit. It was his evidence that since he was illiterate, it was not possible for him to identify in any signature. In fact, he was not in a position to identify the signature of Paul Babu, from whom, he claimed to have received the permit slip after the same was signed by Paul Babu, in his presence. The photographs as disclosed now, were admittedly taken 2 years ago i.e. long after his termination and they were snapped after hearing from Deo Prasad (WW-1). His evidence regarding age and dates, were full of discrepancies and he admitted that although he has lost the permit slip, he has neither informed the said Corporation about such loss nor has asked for a copy of the same from them. He has not also asked for payment sheets from the said Corporation, but he claimed, his Union has asked for them. Such fact, has not been stated by him in his affidavit. Although he has claimed to have been terminated on 21-7-1975,

he could not name the 7th month and he further agreed that Dhiren Babu issued the certificate, after hearing him and not on any consultation of the records. The certificate of Dhiren Babu, contained writings in different ink. The witness admitted that he obtained the certificate after 16 years of his termination. He also agreed that if an employee requires such a certificate, he would have it from the said Corporation and such certificate should be given in the Form of the said Corporation and under their seal. He also stated that he has got the certificate since he has not got the identity card, as the same was not given to him. He also agreed that his appearance from 1975 to 1991, has changed. His evidence regarding age and other dates were full of discrepancies. The present appearance of the workman, compared with the 2 photographs as produced, appeared to have some resemblance. But still then, I find that his evidence was not only false in material aspects, but the same was inconsistent too, with his affidavit in some respect.

193. Like the earlier workman, WW-217 has also produced a certificate from Dhiren Babu, with the same defects, characteristics and manner and affixed with the same, a photograph, which was not of the relevant period of his employment. He has also produced a xerox copy of the duplicate Ration card, without his signature or L.T.I. and with only one entry at the back of the same, showing drawing. He has further produced a certificate from Bijoy Dey, Commissioner of the Municipality, along with his photograph. This Commissioner was Commissioner of Ward No. 29, although the witness was a resident of Ward No. 24. The above two evidence may at best establish his stay at Siliguri, but not his employment with the said Corporation. The Union receipts as produced, were not of the relevant period and even if they were of the relevant period, I feel that they would not have established his employment with the said Corporation, but would have established his membership only. His statements regarding age and other dates were full of discrepancies and his explanation as to why, he obtained the certificate from another Municipal Commissioner, is very difficult to be believed. The photograph as affixed, was admittedly snapped in 1990 i.e. long after his termination. The certificate were obtained at least after 15 years of his termination. He could not establish by any documentary evidence, his stay at Siliguri from 1972 to 1989 and has not disclosed any document, showing his workings in F.C.I. from 1972 or from 1973 to 1975. He could not also establish by any documentary legal evidence, about his employment under Direct Payment System. Although his evidence was that, he was terminated on 21-7-1975, he could not name the seventh month. His statements regarding Supreme Court Case, was based on hearing from his Union. Like others, he has also said to have lost the permit slip, but he has said that he was not in a position to remember the signature of Paul Babu, after such long lapse of time, although he claimed the permit slip was signed by Paul Babu in his presence. For such loss of the permit slip, he has neither informed the said Corporation nor lodged any information to the Police Station. The Union receipts as produced, will at best establish his membership of the Union, but not his employment in the said Corporation. Dhiren Babu's certificate also contained writings in different ink and he had to admit that he did not know who wrote the words "specimen signature" in the certificate or the words "L.T.I.". He agreed that the certificate was given after hearing from him and not after consulting any records. He further agreed that records of the employees of the said Corporation should be lying with them, but he obtained his certificate from Dhiren Babu, as he worked under him and will have to depose in this case. The certificate of Dhiren Babu, mentioned his father to be dead, but that will not appear either from the certificate of Bijoy Babu or from his affidavit. He further agreed that his present appearance is different, than what was his appearance in 1975. On comparison of the present appearance of the witness, long with the photograph there appeared to be some resemblance, but still then, I find that his evidence was discrepant from his affidavit.

194. Like others, WW-218 has not produced his Identity card, but has produced a certificate of employment from

Dhiren Babu, with same characteristics, manner and defects as pointed out earlier. Dhiren Babu's certificate also contained ink of different nature and he has mentioned the father of the applicant as late Munshi Paswan, although his name was Munshi Paswan. This witness has submitted, like others, a xerox copy of the duplicate Ration card, without the signature or L.T.I. and a certificate from Bijoy Babu, along with his photograph affixed. These two records, will at best establish his stay at Siliguri, but not his employment in the said Corporation. It should be noted that the word "Late" was written in Dhiren Babu's certificate later and the witness said that, such correction was made 10 days after the issue of the certificate, as Dhiren Babu forgot to indicate his father as "Late". One of the Union receipts was of the relevant period and not the others. Even if they were of the relevant period, I feel, they would not have established his identity of employment, but they could only establish his membership of the Union. Although the witness was resident of Ward No. 20, yet he has taken the certificate from the Commissioner of Ward No. 29, the explanation as given by him, appeared to be reasonable. The photographs as affixed and produced, were admittedly not of the relevant period of his workings in the said Corporation. They were snapped at about 15 years after. Dhiren Babu's certificate contained the writings and corrections in different ink. He could not produce any document that he worked under Dhiren Babu. His evidence regarding age and other dates were full of discrepancies. His statement regarding Supreme Court case was on the basis of informations received from the Union and so also the position, in respect of the inclusion of his name in the list of 464 employees. He could not produce any document to establish his stay at Siliguri in 1970 to 1989 or to establish his employment in the said Corporation in 1970 or to show that from 1973 to 1975, he was employed in the said Corporation under the Direct Payment System. He has stated, not to have asked for a copy of the payment sheets, where affixing his L.T.I., he used to draw his pay. I wanted to have Paul Babu's signature verified from this witness, but I could not succeed in that attempt, because of suggestive indications given to the witness by the learned Advocate for the said Union. On a comparison of the present appearance of the witness with the photographs as produced, there appeared to be some resemblance. Even then, on the basis of the statements as made, it appeared that the evidence was not trustworthy and was full of inconsistency with the affidavit.

195. In respect of the cases of the workmen, being WW-164 to WW-218, Mr. Ghosh appearing for the said Corporation and who was followed by Mr. Pathak, submitted that since the cases relating to these workmen and so also the defence of the said Corporation, were practically the same and similar to those of WW Nos. 1 to 163 (excepting WW-156), so the general arguments as made by the said Corporation in those cases and indicated earlier, in respect of certificates issued by the Commissioners, Identity cards, Ration cards and Union receipts will apply and apart from repeating them in the cases of these workmen, he made some specific submissions in respect of the certificates issued by Dharendra Kumar Banerjee, Ex. Depot-in-Charge of the said Corporation. He specifically dealt with the certificates issued by the said Shri Banerjee to WWs. 117, 180, 183 and 187. He pointed out that admittedly, the photograph of WW-177 was taken in 1990 i.e. after about 15 years of the retirement of the said Shri Banerjee, and by that photograph, the workman concerned has sought to establish his identity in respect of his employment with the said Corporation, after a long lapse of time and it was only expected and reasonably possible that his present appearance has certainly changed than his earlier appearance and while he was in service if at all, with the said Corporation, a long time ago i.e. either in 1975 or 1978. He also indicated that after his retirement in 1975, the said Shri Banerjee had no authority to issue the necessary certificates of employment in respect of any employee of the said Corporation, who was claimed by him, to be working under him, even if that was true. That apart, he pointed out that the said Shri Banerjee, admittedly had no records with him regarding the workmen concerned, whom he has sought to certify to be in employment under the said Corporation and his certificate on such plain paper, without any seal or written form of the said Corporation, cannot be looked into or considered, to be

valid certificates. He further made severe comments on the basis, in which the certificates have been issued, some particulars whereof have been indicated by me earlier, while dealing with the individual cases and said that it is admitted fact that in the certificates there were no signatures of the workmen concerned and there was only their thumb impressions yet the fact that Shri Banerjee has mentioned in the certificates about the signatures and the photographs of the employees, would only show and prove that his certificates were routine type and far from being real and were only issued or obtained from him, to cloud the issues and to have fabricated, evidence produced before this Tribunal, to establish the identity of the workmen concerned and that too, by creating and fabricating false evidences. The above general submissions on Shri Banerjee's certificates were also indicated by Mr. Ghosh in respect of WW Nos. 180, 183 and 187 and in addition to that, he indicated that the signature of Shri Banerjee on the photograph of WW-180, was by a Ball pen and the certificate was typed and also some portions were written in ink and so, no reliance can be placed on such certificate. He also indicated that same was the position in respect of the signatures in the certificate issued to WW-187. It was also the categorical submissions of Mr. Ghosh that no credibility to the certificates of Shri Banerjee, can or should be given, as the certificates as issued, were not during his tenure, the certificates as issued, were not on consultation of the records of the workmen concerned, they were not in the form of the said Corporation or with and under their seal and really, the said Shri Banerjee has not testified the specimen signatures of the said workmen, when they have only affixed their L.T.s., which have not been mentioned to have been attested in the certificates and perhaps, excepting in one such certificate, there were no signatures of the workmen concerned.

196. After Mr. Ghosh, Mr. Pathak advanced his submissions in respect of all other workmen under consideration. Regarding the certificates of Shri Banerjee, he adopted the submissions of Mr. Ghosh. His submissions on the age of the workmen, were that the evidence of all the workmen were the same viz. their statements on that account, were discrepant, not only on the basis of their affidavits, but also on the basis of their evidence and they were not very conversant with the dates. He claimed that the submissions of the workmen regarding the inclusion of their names in the list of 464 employees and regarding the Supreme Court case cannot also be looked into or considered, as they were based on hearsay only. He pointed out that excepting WWs. 181, 188, 198, 202 (who produced his permit slip), 206, 207 and 212, no one could either produce or identify the signatures of Paul Babu, although they claimed to have received from him and had affixed their L.T.s. in his presence and he also signed the slips in their presence. He also pointed out that uniformly, those workmen as indicated on practically all the workmen, have either lost these slips or could not find them out, but they have not admittedly asked for the copies of the said slips from the said Corporation, although they claimed that they were lying with them or have lodged any information to the Police.

197. Mr. Pathak indicated that the workmen concerned, have not uniformly produced all their Union subscription receipts and in fact, they have, in the same voice, claimed that apart from the receipts as produced, they have lost all other receipts. He submitted that even if he receipts were duly produced and proved, which fact, he denied, they would at best, establish their membership of the said Union, but not their identity of employment with the said Corporation.

198. Mr. Pathak pointed out that out of the workmen under consideration, WW Nos. 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 181, 182, 184, 185, 186 and 202 only, have produced their respective Identity cards, bearing Nos. W-1/109, W-1/191, W-1/159, W-1/159, W-1/171, W-1/197, W-1/249, W-1/84, W-1/90, W-1/138, W-1/33, W-1/124, W-1/138, W-1/173, W-1/99, W-1/180, W-1/211, W-1/182, W-1/219, W-1/220 and W-1/187 respectively. These Identity cards were issued in April or May 1978. The respective dates will appear from the concerned cards. It was pointed out by him that the Identity card of WW-164, will be very difficult to be accept-

ed or relied upon, as the seal therein, on the basis of Deo Prosad's (WW-1) evidence, was admittedly different from that of the seal of the said Corporation. The ink used, also appeared to be different and the photograph and the L.T.I. therein, have not been duly attested. He further pointed out that the name of the workman also differed with the name in the card. In respect of WW-175, it was pointed out by Mr. Pathak that the Seal in the Identity card, suffered the same defects as that of WW-164. He indicated that even though there was stamp of Dutta Babu (WW-2), but there was no signature of his and it was also pointed out by him that it is not strange that although the Identity card was of 1978, yet the writings therein, appeared to be fresh? While on the Identity card of WW-166, bearing No. W-1/59, Mr. Pathak pointed out, the seal therein had the same character as that of WW-164 and there was really no signature of Dutta Babu (WW-2) and that apart, it was pointed out that although the photograph as affixed therein was not a coloured one, yet on the photograph as affixed, there appeared to be a red mark on the forehead of the workman concerned. He also pointed out the difference in ink as used. It was then pointed out by him that although the Identity card of WW-187(W-1/159) was stated to be under the signature of Banerjee Babu, who is dead, there has really been no such signature and there was also no seal of the said Corporation. This, according to him was contrary to the evidence of Deo Prosad Paswan (WW-1) and Shri Jana (WW-4), and the address as given, was not that of the workman concerned.

199. In respect of the Identity card of WW-168 (W-1/171), it was pointed out by him that the name and data therein, were written in different ink and same was his submissions in respect of the Identity card (W-1/192) of WW-169. It was then pointed out by Mr. Pathak, in the Identity card of WW-170 (W-1/249), there were not only water marks, but there was proof of affixation of the photograph at a later stage and the character and the ink and the writings were worthy to be noted, apart from the fact that the seal as affixed, had also the same character as that of the one in the card of WW-168(W-1/171). In the Identity card of WW-171 (W-1/84), it was pointed out by him that there was really no seal and if at all the character of the seal in the Identity card was like that of WW-164 (W-1/171). He also commented on the fading nature and character of the L.T.I. therein and the writings as appeared. It was indicated by Mr. Pathak to the Identity card No. W-1/90 of WW-172 and said, although the same was issued in 1978, but the writings, therein and their character and the ink used, will have to be noticed. The seal as affixed, he submitted, had the same character as the seal in the Identity card of WW-168 (W-1/171). He then indicated that the name, father's name and the date of the Identity card of WW-174 (W-1/33) will have to be noted and considered in the matter of finding out if the same was genuine or not and his submissions in respect of the Identity card of WW-175 (W-1/124) were that, the way and the manner in which the same was issued and maintained, will have to be considered. He pointed out that the writings and ink used in the Identity card of WW-176(W-1/137), will have to be taken into consideration. It was then pointed out by him that the number and writings in the Identity card of WW-178(W-1/99), were worthy to be looked into and considered. In respect of the Identity card of WW-179(W-1/180), which was said to be issued by Banerjee Babu, Mr. Pathak indicated that on his own evidence the workman concerned has spoken of two Banerjee Babus and the condition, writings and the address as mentioned, will have to be considered and looked into, before placing any reliance on this card.

200. The Identity card of W-181 (W-1/211) was issued on May, 13, 1978 and on that basis, Mr. Pathak pointed out that not only the condition of the card with the writings as appeared were very doubtful to be relied on or considered. He also threw his suspicion regarding the validity of Identity card No. W-1/210 of WW-182 and pointed out that the same was not produced by Deo Prosad Paswan (WW-1) who produced the other cards, but the same was produced by Bhadoe Sahani, who has not admittedly deposed to the validity or other side of the same. Mr. Pathak also threw his suspicion about the Identity card No. W-1/219, belonging to WW-184, mainly on the basis of the Permit No. being C-6 and the photograph as annexed. This card was issued by late Jibhanand Banerjee and it was indicated that the signature of the said Banerjee, has not been duly proved

and established on the basis of the evidence of Shri Jana (WW-4). He claimed that the Identity card, as sought to be relied on by WW-186 being W-1|220 was not duly identified. He then pointed out that the Identity card No. W-1|187 of WW-202, which was issued on July 14, 1978, under the signature of Dutta Babu (WW-2), because of the conditions and character of the photograph and writings, cannot be relied upon and the Identity Card No. W-1|164, who has admittedly died in 1984 and has not deposed, cannot be taken into consideration, even on the basis of the evidence of his son WW-209, whose Identity card No. was W-1/163. It was pointed out that WW-209 had agreed that apart from him, there was and are other heirs of the said deceased. These cards were claimed to have been issued by Banerjee Babu and Mr. Pathak submitted that since the signatures of Banerjee Babu have not been duly proved, though the evidence of Shri Jana (WW-4), they cannot be relied upon. It was also pointed out by Mr. Pathak that although WW-209 has said that he and his father was employed together and at the same time and he has also said that the father received his card on May 1, 1978, yet he could not mention the date, when he received his Identity card and as such, his evidence was not trust-worthy. Workman being WW-Nos. 183, 185, 187 to 201, 203 to 208 and 210 to 218 did not produce their Identity cards, but to establish their identities of employment, they have produced certificates from Shri Dharendra Kumar Banerjee and Mr. Pathak repeated his earlier statements and submissions against those certificates including those of Mr. Ghosh, the particulars whereof have been noted earlier. It was also pointed out by Mr. Pathak that in many cases the addresses in the Identity cards have differed from the addresses of the workmen. In respect of the seals available in some Identity cards it was stated that since they were not in agreement with the evidence of Deo Prosad (WW-1), they cannot be accepted to be true and genuine.

201. It was contended by Mr. Pathak that none of the workman could legally and duly prove their employment with the said Corporation under Direct Payment System and in fact, they have neither produced the payment sheets nor ask for copies of them from the said Corporation, although they were claimed to be lying with the said Corporation or could have them produced. It was also indicated by him that the evidence of the workman that they received employment for four months in 1978, for their employments in 1975, can hardly be believed and relied upon, in view of their own evidence to the effect that they could not mention the particulars of the four months of such employment, duly and appropriately. He also pointed out that even though many workmen have mentioned to have been terminated on 21-7-1975, yet excepting one or two, none could mention, what was the name of the seventh month and this will prove and show that they may have tendered, tenuous evidence.

202. Mr. Pathak then pointed out that the certificates of the Commissioners will not establish the employment of the workmen concerned under the said Corporation, even though they may establish their stay at Siliguri. But, even then, on the basis of the intrinsic evidence, as appeared from the certificates, which according to him, were stereotyped, no reliance could or should be placed on them. He indicated that most of the certificates were issued by Bijoy Dey, Commissioner, Ward No. 29 of the Municipality. Sometimes for the residents of his Ward and even at times, for the residents of other Wards. From the character and manner of those certificates and more particularly when, the typed certificates were produced, after filling up the blanks in hand, it was stated that they will show and establish and that too from the manner in which they have been typed that they were typed earlier, leaving blank spaces and thereafter, they have been filled in. In any event, it was pointed out that Bijoy Babu has stated to be knowing those, whom he has certified, to be permanent residents of Siliguri for a long time and without any particulars. Some of the Certificates of Bijoy Babu were hand written, but, Mr. Pathak indicated that the language and contents of them were the same as the typed certificates. Taking the total effect of the certificates as produced. Mr. Pathak pointed out that they appeared to be prepared and fabricated for the purpose of this case. He also indicated that as Bijoy Babu has not deposed, his certificates and the contents

thereof or the validity of them, have not been proved and established.

203. Regarding the certificates issued to some workmen by Shanti Chakraborty, another Ward Commissioner, Mr. Pathak repeated that the effect of them will be the same in the matter of employment and residence, as indicated in respect of the certificates issued by Bijoy Babu. It was also claimed by him, either those certificates of Shri Chakraborty or the other certificates, as issued by Shri Rabin Paul, Shri Agarwalla and a certificate issued by the Upa Pradhan, have not established the employment of the workmen concerned or have indicated definitely, when they were staying at Siliguri. It was submitted that these certificates were also procured for the purpose of this case and they or their contents have not also been duly proved and established, as none of them have deposed.

204. Mr. Pathak pointed out that the Ration cards, as produced, were all duplicate copies, without the signature or L.T.s. of the holders. He indicated that it was the common case of the workmen, they had Ration cards earlier and on deposit of those cards, they have received the present cards, but, they have not been able to prove the possession and holding of the earlier cards. It was pointed out that even those Ration cards, will not establish their employment with the said Corporation, although they may establish their stay at Siliguri. It was indicated that Shanti Babu, the Commissioner of the Municipality, the Gram Panchayat or Anchal Pradhan, had no authority to grant Ration cards and as such, the cards as issued by or under their signatures, should not be considered. Mr. Pathak then pointed out that there is no provision for "Batch Card" of "Group Ration Cards" and as such, those type of cards, should be discarded. He argued that there may be "Family Cards", but here, the production of such cards will not be of any help, as the workmen concerned have agreed that they were not members of the same family and were staying in their separate shanties and as such, the family cards as produced, cannot be relied upon. Apart from the above, Mr. Pathak indicated that the manner of entries, against drawings, will have to be looked into and considered.

205. It was pointed out by Mr. Pathak that there has been in the cases of the workmen, no stable and reliable evidence as to their stay at Siliguri. He indicated further that even if such stay has been proved or established, the same has not admittedly established the identity of employment of the workmen concerned, with the said Corporation. While on the case of employment, on the basis acting in Direct Payment System on or about 1975, he pointed out that has, in fact, been not established by any cogent and reliable legal evidence, on the basis whereof it can be observed that any of the workers has worked under such system.

206. Apart from the above, both Mr. Ghosh and Mr. Pathak relied on the earlier submissions made on behalf of the said Corporation, in respect of workman Nos. WW-1 to WW-165 and repeated that since, not only the affidavit evidence, but also the pleadings or the evidence as tendered were and are in the same line, the arguments/submissions as made and as indicated earlier, can well be applicable in the cases of workmen Nos. WW-164 to WW-218.

207. Mr. Das Chowdhury, appearing for the said Union also agreed on the submissions in respect of the commonness of the points between the cases of earlier workmen and the present one. He of course submitted that the Tribunal, in the matter of identification, should not follow or take rigid and technical view, but such approach should be lenient and sympathetic. It was, then submitted by him that even though there were and are lacuna in the evidence of the workmen concerned, the said Corporation cannot or should not be allowed to take advantage of such lacuna, more particularly when, they have not produced any contrary evidence and as such, a serious note should also be taken by the Tribunal of such non-disclosure of evidence and suppression or non production of relevant evidence and records. It was then pointed out by him that it was very difficult to expect due diligence of proof in respect of or from the illiterate and poverty stricken employees and because of such condition. It was highly improbable that those employees will take recourse to production of false

documents or evidence and he pointed out that in fact, no witness, so far has dared to produce any evidence and speak falsely, regarding their identity. He further indicated that the said Corporation has not also been able to prove and establish with any cogent legal evidence that the evidence as tendered by the workmen concerned, were false. It was admitted by Mr. Das Chowdhury that it is true that there are contradiction of statements in the affidavit of the workmen concerned and their evidence regarding age, but such contradictions, if any, should according to him be also overlooked, as the workman concerned has faced the cross-examination regarding questions relating to their identity, boldly. He further, pointed out that the said Corporation's attitude towards Payment Sheets or non-production of them, were to be noted. In fact, it has been alleged that they have not produced those sheets, although they were lying with them and there was earlier, an order made by the Tribunal on April 4, 1979, for production of the Payment Sheets. I shall indicate hereafter, what were the contents, terms and effect of that order. In that view of the matter, Mr. Das Chowdhury claimed that adverse presumptions should be drawn against the said Corporation.

208. After making the above submissions, Mr. Das Chowdhury made general submissions. While on that point, he firstly dealt the question of identity and submitted that since the workmen concerned have themselves appeared, gave their names, which tallied with the list of 464 employees and the said Corporation has not produced any workman with the same name and avoided the onus to dispute the case of the workmen concerned, so, the Tribunal should also draw appropriate adverse presumption against such inaction. Mr. Das Chowdhury then submitted that such inaction would really strengthen the stand of the employees concerned and such stand, could have, only been rebutted, if any contrary evidence was produced by the said Corporation. Regarding termination of the workmen concerned in 1975, Mr. Das Chowdhury submitted that all essential tests of identity, should be taken and considered to have been fulfilled and more particularly when, no body has claimed to the contrary or has deposed to be the co-employees of the said workmen or prove that the workmen concerned have impersonated. It was then pointed by Mr. Das Chowdhury that in the facts of this case and in the circumstances as indicated earlier, it could not be expected that the concerned workmen came without documents, it may be that the employees concerned came empty handed to face the Cross-examination, but that was not the case here and in this case, all efforts have been made to produce those relevant documents, which will indicate and refer the names of the workmen concerned and by that, he meant the Identity cards, Permit slips and certificates from Dharendra Kumar Banerjee, Ex-depot Incharge, by those, who had not either received the Identity cards, or were not in a position to produce them, for circumstances beyond their control. He, in his usual fairness agreed that the Ration Cards and the Commissioner's certificates as produced, will really have no bearing, so far as the work and employment of the employees concerned or their employment under the said Corporation and they would only show, their stay at Siliguri. He also pointed out that the same will be the effect of the Union subscription receipts and they would only establish that the employees concerned were employees of F.C.I Depot and their membership of the Union. He laid great stress on Company's inaction in not producing any evidence to the effect that the employees as produced, were not real and therefore, they cannot be allowed to take the stand as has sought to be taken against the Identity cards, as produced. He further indicated that if the employees were not real employees, so like any prudent man and authority, the said Corporation could have produced the real employees and the fact they have chosen not to do so, will show and establish otherwise viz. the workmen as produced were, real employees, which could be the test, in terms of the observations of the Supreme Court as made in F.C.I's case, reported in 1985(2) LLJ 4. Here, he made specific reference to paragraph 4 of the report and indicated that the issues, involved in this case, will show, the same relates to work and whole question will thus be, who were those 464 employees and according to him, by the evidence as produced, the employees concerned have been able to establish that they were and are within those 464 concerned employees. On a reference to paragraph 3 of the report, it was pointed out by Mr. Das Chowdhury that Direct Pay-

ment System in this case was not in dispute or could be disputed by the said Corporation, as it has been indicated that from March 10, 1975, the said Corporation changed the method of payment, superseding the Direct Payment System and reintroduced contractor's system, but, as indicated earlier, the said Corporation adopted a method, by admitted non-production of the payment sheets, which were lying with them, intentionally and more particularly, the names of the employees concerned, who worked under such system. As stated I shall indicate hereafter, the effect, terms and scope of the order dated April 9, 1979, hereafter. Mr. Das Chowdhury further referred to paragraphs 11, 13 and 14 of the report and wanted to establish that those paragraphs would prime facie show and establish that the said Corporation knew the workmen concerned and the documents, meaning thereby their Payment sheets, were known to them. As pointed out, really, the dispute that the employees were there, their employment was not in question, but the only thing is to be established was the identity in respect of their employment that they were within those 464 employees. He further indicated, on a reference to the order dated April 9, 1979, as referred to hereinbefore that although Payment sheets were directed to be produced, but the said Corporation, as stated, have not intentionally produced them. The submissions of Mr. Das Chowdhury regarding the directions to produce the Payment Sheets, were perhaps not covered, as the said order do not speak of Payment sheets specifically, but has directed, without specifying the particulars of the records to produce records relating to payments made to the workers' representatives or the workers directly, in respect of the period January 4, 1973 to July 19, 1975. It should be noted that the said Corporation has produced some of the records. It must also be noted here the Ex. M-3 was perhaps the basis of the case regarding Payment sheet, or the issue thereof. This was marked on dispensing with the formal proof and the same was on the subject of submission of acquittance to the Depot office for arranging Direct Payment and postulated that (1) Bills to be prepared by the Departmental staff. (2) Labour should authorise their Sardar/Mondal to accept payment and sign Bills and (3) Bills with acquittance in original should be with the said Corporation. Although, this Exhibit was marked in the manner as indicated, but the second item or clause as required, was not duly proved. It was further indicated by Mr. Das Chowdhury that apart from such payment sheets there cannot be any other document, to establish the fact of employment or to discharge the onus by the workmen concerned, in that respect. But, as stated earlier, in spite of attempts, those sheets could not either be produced or procured from the said Corporation.

209. While on the question of work or workings of the employees concerned, Mr. Das Chowdhury referred to the evidence of Deo Prosad Paswan (WW-1), who was a Sardar and has categorically stated that he worked with the employees concerned. He stated that there is no reason, why the evidence of the said WW-1 should be disbelieved or cannot be relied upon. In fact, he made specific reference to the cross-examination of WW-1 on March 21, 1980. It was stated that there were ample evidence to establish that on July 21, 1975, employments of the workmen concerned were terminated. Such fact, according to Mr. Das Chowdhury, would not only appear from the evidence of WW-1, but the same will also appear from the evidence of WWs 218 and 164, as they have stated, they all knew and remembered the date 21-7-1975, as on that date, they were all terminated together. Mr. Das Chowdhury further stated that it is a fact that most of the workmen, could not name the 7th month, but in view of the circumstances as indicated such failure to mention the name of the 7th Month would not be very material. I have indicated earlier in paragraphs 68 to 74 why the evidence of WW-1 cannot be relied on or applied in the facts of this case.

210. While on the Identity cards, Payment sheets and Certificates by Dharendra Kumar Banerjee, Mr. Das Chowdhury contended that those records will certainly prove and establish that the employees concerned were in work with the said Corporation. He stated that the photographs as affixed to the Identity cards, so also the certificates of Dhiran Babu, will show similarity of the present appearance of the workmen concerned. He could not also disagree, that certificates from Dhiren Babu, were taken 15/16 years

later than the years, when the workman concerned were employed in 1975, and there could be change of appearance. Even then, it was submitted that inspite of such changes, the present identities of the employees concerned, even at a look at their present appearance, could be found to have agreed. Mr. Das Chowdhury further pointed out on a reference to page 39 of the evidence of WW-1 that as Secretary of the local Unit of the said Union, the said witness has duly produced the Identity cards and that evidence cannot and should not be disbelieved, even on the suggestions as thrown by the said Corporation that there will no evidence to the effect that the employees concerned, handed over their cards to the said WW-1, for production before this Tribunal. The fact that their cards have been produced by WW-1 and not by the employees concerned individually, will be of little significance according to Mr. Das Chowdhury.

211. It was pointed out by Mr. Das Chowdhury that all the workmen have stated unequivocally that permit slips were granted to them by Paul Saheb, after the strike in 1975 and there was no doubt that such grant of permit slips, was necessary, to fix the identity of the employees concerned after the strike. He agreed that many of the employees could not identify the signature of Paul Saheb, but he indicated that at least workmen Nos. 174, 180, 198, 202, 206, 107 and 212, have been able to identify the signatures of the said Paul Saheb. In fact, he pointed out that workmen Nos. 181 and 202, bearing Identity card Nos. W-1/30 and W-1/39, have filed their permit slips and from them, it will appear that numbers were mentioned in those slips and that fact will establish or go to show that they were issued to every one or issued which distinct and different serial numbers. In fact, it was also pointed out by Mr. Das Chowdhury that Paul Sahib's signatures in Exts. M-6, M-7, M-8, M-9 and M-10 were recognised and identified by some of the employees, on being asked. He further mentioned, for the peculiar manner of the signature of Paul Sahib, the employees concerned had no difficulty to recognise the signatures of Paul Sahib. It should be indicated here that it is true that Paul Sahib's signature had a peculiar style and for that his signatures could be recognised by the employees concerned. But even then, it should be noted that those peculiar signatures had different strides and strokes, some particulars when of, will be indicated hereafter.

212. While on the question of Identity cards, Mr. Das Chowdhury referred to and relied on the evidence of WW-91, WW-159, WW-249, WW-84 and WW-190 and stated that those workmen could, without any doubt and any dispute, recognise the signatures. He pointed out that even if the signature on the Identity card of WW-249 of Dutta Babu was indistinct, yet, the employee concerned, could identify the same. I was further pointed out by Mr. Das Chowdhury that from the evidence of WW-1 at page 27, it would appear that he collected the Identity cards, for production before this Tribunal and for the office which was holding, he could rightly do so. Regarding this part, I think, in view of the views as indicated earlier, much reliance on the evidence of WW-1, cannot be placed. Against the submissions of writings in the Identity cards, viz. some of them were fresh and some writings were fade and in different ink, Mr. Das Chowdhury submitted that such difference was perhaps occasioned, because the Identity cards were prepared by one and the dates therein, were put in by others and perhaps for that reason, some times, father's names of the holders and the dates of issue of the cards were not in the same ink. While on this point, reference was made by him to pages 26 and 27 of the evidence of WW-1 and more particularly, the statements, he made on voluntarily. I have already indicated about the quality and character and so also the effect of the evidence of WW-1 and for that, I think much reliance on such evidence can not or should not be placed. While on the point under consideration, Mr. Das Chowdhury further indicated that the Identity cards, which were issued by Late Shri Banerjee, were also appropriately proved in evidence (at page 8) by Shri Jana WW-4 and from his evidence, it will appear that they were prepared by the office staff. In cases where the address have not tallied, Mr. Das Chowdhury pointed out that it was bound to be so, as the addresses given in the Identity cards, were perhaps the addresses of their father. He also pointed out, even if, the names of the holders differ-

red in many cases, but that will not matter much, as father's names of those holders were there. He made a specific reference to the case of WW-186, where her husband's name has been indicated and that according to him, was done duly. It is an admitted fact that one Shri Bhadoi Sahani had signed the Identity card of WW-182 and the same was not done by Deo Prosad Paswan WW-1 and against the submissions made on that account by the said Corporation. Mr. Das Chowdhury pointed out that there was no dispute that the said Sahani was the President of the said Union and as such, it could not be doubted or disputed that he could sign on the concerned Identity card. But on the evidence of WW-1, it is difficult to accept such submissions. Finally, Mr. Das Chowdhury pointed out that there should be no dispute regarding the identities of the workmen concerned dispute regarding the identities of the workmen concerned or the validity of the Identity cards, as Permit numbers as mentioned there, would tally. He pointed out that the word C-6 as mentioned in the case of Identity card of WW-184, would mean that she was casual. On the basis of available evidence, I feel that the submissions as made by Mr. Das Chowdhury, in the admitted different manner of writings, use of different ink, while writing the names, addresses and dates, cannot be decided so easily and convincingly.

213. These group of employees, whose cases are now being considered, on filing a chart on May 8, 1992. Mr. Das Chowdhury agreed that in 33 cases, Shri Dharendra Kumar Banerjee, issued certificates of employment of the employees concerned, who were employed in 1975. Those certificates according to him, were issued by the said Shri Banerjee, to those, who were not given work in 1978 and as such, have no Identity card or to some of them, who lost their Identity cards. By Identity cards he meant the cards of WW-187, WW-188. He could not disagree that the certificate in the case of WW-177, was produced without any photograph. On the basis of the certificates as issued by Dhiren Babu, who, admittedly was Depot In-charge in 1975, i.e., at the relevant time, which fact again has not been disputed, Mr. Das Chowdhury pointed out that there cannot be any doubt that the said Shri Banerjee knew the workmen concerned and he knew them from his working knowledge, which was also his personal knowledge. There were submissions made by the said Corporation that Dhiren Babu's certificates, without any doubt showed that he has attested the signatures and photographs of the employees concerned and in fact, there were really no signatures, by them, but only their L.T.s, were available. There was of course exception in one case (WW- ) . It was submitted by him that even though L.T.I. is marked and not a signature, but the essence should be looked into. It was candidly admitted by Mr. Das Chowdhury that such defects in attestation were there, but they were so negligible that they can be overlooked. But, he of course candidly agreed that Dhiren Babu should have been much more careful. It was further pointed out by him that there has been suggestions thrown about the collusion between Dhiren Babu and employees concerned, but such suggestions according to him, were not expected from the said Corporation and they have not been proved. Finally, Mr. Das Chowdhury submitted that under Section 3(56) of the General Clauses Act, a Thumb impression can be considered or construed to be a signature.

214. Mr. Das Chowdhury could not deny, in many Ration cards, there were double entries, but submitted, such double entries were bound to occur, because in the same card, rationed articles and Kerosene oil were drawn, and that is why there, cannot be any question, why particular dates were shown twice. On a reference to the Ration cards of WW-172, WW-175 and WW-192, he pointed out that from them, drawing K. Oil would be apparent. A point was sought to be made out that WW-194 have drawn ration 3 months after the issue of the card. Mr. Das Chowdhury, without any legal evidence, said that the same has perhaps happened, as rationed goods were not available, but in any event, for such non-availability, the holders cannot be made responsible. Even inspite of the defects and deficiencies as pointed out in respect of the Ration cards, Mr. Das Chowdhury pointed out that the real test would be, whether through the Ration cards, rations were allowed to be drawn. He submitted that since and in fact, rations were allowed to be drawn on such defective Ration cards, it cannot but be held that the cards were legal and genuine. Some Ration cards were issued by Shanti



Babu, signed in Bengali. It is an admitted fact that of these employees, in the cards of WW-209, rubber stamp seal of the Municipality was available. It was then submitted by Mr. Das Chowdhury, in Mofussal areas, such cards were issued by authorities other than Rationing Authorities and that is possible and permissible. There has in fact been no legal evidence to the above effect.

215. The difference of age in the affidavit and Ration card of WW-209, was pointed out and in reply, Mr. Das Chowdhury indicated that it is only reasonable and natural that there would be such difference, as in the Ration card, the age of 1986 of the workman concerned, has been mentioned and by this time, he has grown older. That is the reason, why, Mr. Das Chowdhury pointed out, the difference in age, appeared. There were two types of cards, apart from Batch Cards as stated by WW-211 viz. Family cards and Group Ration Cards. While on Family Ration cards, Mr. Das Chowdhury indicated that there will be no difficulty in relying on them, after taking them into consideration that really they were family cards, as entry numbers were one and the same. Dealing with the Group Ration cards, Mr. Das Chowdhury referred to the evidence of WW-194, who stated that his group contained of many members even though, they were not the members of the same family. He stated, there will be no difficulty in relying in those cards, as they contained the same folio numbers and running account numbers. It was then indicated that there are really 4 sets of Ration cards, which would come either under Family cards or Group Ration cards. For instance, he pointed out that at the first instance, the evidence of WW-179 would show, there was a 'Family Card' of WW-165 and WW-168 and WW-202 and his submissions on the validity of those or the reasons for such, were the same as indicated earlier. It was then pointed out that the second Group of Family cards were produced by WVs 204 and 205. According to him, the third group was produced by WW-194 and the fourth one, by WVs 211 and 212 and the same submissions as indicated above, in respect of Family cards, were made by him. Similar submissions were advanced in respect of WW-194, WW-211 and W-212 and he pointed out that if the Folio numbers of these cards are taken into consideration, there will be no room to doubt that they were and are genuine cards. The term "Batch card or Batchwise card" as stated by WW-211, is really foreign to the West Bengal Rationing Manual or the laws relating to Ration and Rationed Articles, here.

216. While on the question of discrepancies in age, Mr. Das Chowdhury pointed out that since the workmen concerned were illiterate, so the difference in age, as deposed by them, would only prove and establish their depth of illiteracy. He could not of course deny that amongst others, WW-164, WW-165 and WW-201, gave such discrepant evidence in respect of their ages.

217. It was submitted by Mr. Das Chowdhury that those, who could produce their Identity cards, on receipt of them from the said Corporation, there would be no difficulty in holding them to be bonafide and genuine. But, he admitted that many certificates have been produced by some workman from Dhiren Babu, Bijoy Babu and other Commissioners. He could not disagree that it is true that most of the certificates of Bijoy Babu, seemed to be typed in the same proforma and blanks were filled in by hand. That of course according to him, will not establish that Bijoy Babu or the other certifiers, who gave certificates, certified wrongly, but in his usual fairness, he admitted that certificates of Bijoy Babu and other persons excepting that by Dhiren Babu, would be of no avail or assistance in establishing employment of the employees concerned with the said Corporation at the relevant time and they may, at best establish their stay at Siliguri. Similar submissions were put forward by Mr. Das Chowdhury, in respect of the Ration cards.

218. In reply to the submissions on Section 3(56) of the General Clauses Act, Mr. Ghosh submitted that since the attesting person viz. Dhiren Babu, has not come and deposed, testifying to the fact that he treated the L.T.Is as signatures and as such declarations have not been given by the workers concerned, so the mark viz. J.T.Is, even by implications, cannot have the characteristics of a signature and more particularly when, Dhiren Babu has specifically mentioned in his certificate that he has attested the signatures. Such non-appearance of Dhiren Babu, or his non-production, Mr. Ghosh

submitted on the point and claimed that as such, without the evidence of Dhiren Babu, the submissions made at the Bar, cannot be taken into consideration and accepted.

219. While dealing with the cases of the respective workmen, I have already indicated my views in respect of the evidence as sought to be lead through the Ration cards, Certificates of the Commissioners and the Union receipts, which have substantially agreed with the frank and fair submissions of Mr. Das Chowdhury. Thus, I again indicate that those records as produced, may at best establish the residence of the workmen at Siliguri and their membership of the said Union, but will not in any way support their cases on employment with the said Corporation at the relevant time viz. either in or upto 1975, thereafter, for four months in 1978 or after that. It should also be indicated that those certificates do not indicate or establish since when the workmen concerned were residing at Siliguri.

220. Even inspite of my above findings, I think, it will be improper for me, if I do not indicate my findings in respect of the certificates issued by Bijoy Babu, Shanti Babu and others, including the Upa Proddhan. The character of the certificates and the manner in which they were produced, admittedly established that at least type written ones, which covered the majority, were in stereotype typed form and hand written portions therein, were filled in later and definitely after the typings were done by Bijoy Babu. The fact, that those certificates were typed earlier and kept or made ready, will also appear from the fact that before the names of the fathers of the workmen, both the word "Sri/Late" were typed and at the time of filling in the blanks, the words "Sri" or "Late", as the case thought to be, were score through and even in doing so, in some certificates, mistakes, specially by Bijoy Babu, were committed. There were of course some hand written certificates issued by Bijoy Babu in the same line as that of the type written certificates and in none of these two types of certificates, he has mentioned the period or extent of the stay of the workmen concerned, instead, he has certified that they were known to him, to be staying at Siliguri for a long time. The language used in the certificates issued by Shanti Babu were the same and he has also not indicated definitely, since when, he knew the workman, to be staying at Siliguri and none of the certificates, either by Bijoy Babu or Shanti Babu, indicated the actual address of the workman concerned. The certificates, which were issued by other authorities, whose numbers were few, did not also specifically mention the period, since when the workmen concerned were staying at Siliguri or what were their actual address. Apart from the above, I find that the certificates under consideration, have not been duly and legally proved, as none of the makers of them, have been examined.

221. I have already indicated, the effect of the Ration cards, as produced, in respect of the point and identity of employment of the workmen concerned with the said Corporation. But, one thing is certain that all such cards as produced, were duplicate copies, without the signatures of L.T.Is. of the workmen concerned and none of them, except perhaps one, could establish that on deposit of the previous cards, which they had, they have received their present cards. The way and the manner, the cards have been issued, could not dispel the doubt/suspicion, regarding their issue and more particularly, those cards which were issued either by Shanti Babu, Municipal Commissioner or the Gram Panchayat/Ancal Proddhan (at least in the case of WW-184) and as such, they cannot be accepted as authorised, as the Ration cards/Documents, under paragraph 10(1) of the West Bengal Rationing Order, 1964 (hereinafter referred to as the said Order), the State Government has the power to issue such document, with a view to control the distribution or supply of or any other dealing with, any rationed articles, issue or cause to be issued to any person or class of persons or to the public generally in area, for the purpose of rationing of such article and the manner of issue of such document under the said Order, has been indicated in paragraph 10(2) of the said Order, to be in the prescribed manner and form, to such persons and shall be subject to such terms and conditions as may be prescribed and receipt for every such document shall be given in the prescribed manner by the person, to whom it is issued. Every such document under paragraph 12 of the said Order, shall remain to be the property of the State Government. Under paragraph 22 of the said Order, the State Government may, by general or special order, delegate any of the power conferred on it by paragraphs 3(1), 10(3) and 19, to any officer

subordinate to it or to any other person. Even under the West Bengal Urban Area Rationing Regulations, 1966 "Rationing Officer", will mean an Officer appointed as such by the State Government and includes every officer specifically authorised in that behalf by the Director. Either Shanti Chakraborty or the other persons or authorities, who issued the concerned cards, were not in any way, any such subordinate officer of the State Government and any delegation of such powers to them, have not been established or proved and produced. It should also be indicated that under paragraph 13(1) of the said Order, if any Ration document is defaced, lost or destroyed, the officer authorised by the State Government, in respect of any area in that behalf, may after making such enquiry as he may think fit, issue a Ration document in place thereof, on payment of fees of 0.50p. This evidence was available from the Ration cards of WWS 212 and 217. But in the other cases, no such or any appropriate evidence was available or tendered. It should further be noted that under paragraph 21(2) of the said Order, a Ration document, will include, a ration book, a family identity card/or Ration card as inserted by Order No. 99 F.S. dated January 6, 1966, or any part of the any ration book or family identity card or Ration card or any ration coupon or any declaration, authority, permit or other document issued or made under or in pursuance of the provisions of the said Order. The word "Family" has not been defined in the said Order or anywhere, excepting the reference to the said town, must be in respect of the matters of ration or relating to rationing, will be available in Calcutta Industrial (Extended) Area Rationing Regulation, 1964, to mean a household, comprised of individuals living on the same premises and having meals in a common mess. This meaning of the "Family" as indicated, appeared to me to be reasonable, in matters relating to Ration or dealing with Ration/Rationed articles. Thus, I feel that the expression "Batch Cards" as used by WW-211 and the "Group Ration card" as mentioned amongst others by WW-194 and on which submissions were made by Mr. Das Chowdhury, cannot be accepted. "Family Cards" as indicated and argued by Mr. Das Chowdhury, are possible in matters relating to Rationing, but on the basis of the evidence as tendered and considering them with the tests as required in respect of "Family Cards", it is very difficult to hold that necessary tests have been duly satisfied in the cases of the workmen under consideration, or who have deposed to that effect. There were certainly haphazard entries regarding drawings in some cards, but they in my view, may not be considered to be very relevant, as, for such entries, even if made wrongly or otherwise, these illiterate workmen were and are not responsible, more particularly when, nothing turns on the Ration cards, in the matter of establishing their character of employment with the said Corporation, as indicated earlier. In view of the above findings I feel that consideration of the other submissions of Mr. Das Chowdhury, on the continued and running serials, folio and index numbers or the effect thereof, will not be required to be considered, in further or more details. Mr. Das Chowdhury indicated that when, even in spite of the character and defects of the Ration cards as indicated, Rationed Articles have been allowed to be drawn, that fact alone would establish the genuineness of the cards. Even if that fact is accepted, the same, for the views as indicated earlier, will not be of much assistance to the workmen concerned in the matter in issue here.

222. Out of the cases of the workmen concerned, Dharendra Kumar Banerjee, Ex-Depot Incharge of the said Corporation has issued certificates in respect of WW Nos. 178, 181, 182, 184 (without the photograph), which was from the Gram Panchayat, 185 to 208 and 210 to 218, with their L.T.Is, and photographs attested. The certificates from Dhiren Babu were admittedly obtained by the workmen concerned in or about 1990 or thereafter, and that too, long time after their terminations in 1975 or at least after about 15 years or more and admittedly, at a time, when Dhiren Babu was not in the services of the said Corporation. It also appeared that the certificates of Dhiren Babu were not issued in any form of the said Corporation with their Seal and he, really issued the certificates, after hearing from the workmen concerned and not after consulting any records. There were some over writings in many certificates and there were also evidence of the use of different ink, in many. The certificates, on the basis of their manner and character, apart from the writings, seemed to be prepared for the purpose of this case and they have not in fact been legally and duly proved, as the maker

of them, have not deposed. In view of the above, even if the L.T.Is. are considered to be the signatures of the workmen concerned, which fact is very difficult to hold, as neither the workmen concerned deposed the L.T.Is. to be their signatures nor Dhiren Babu has testified those L.T.Is. to be the signatures of the workmen concerned, I feel that the submissions of Mr. Ghosh as indicated earlier, were of substance. It is worthy to be noted that even though there or other officers of Dhiren Babu's time or when the workmen concerned had worked and the records have been considered to be lying with the said Corporation, none of the employees, have either approached any of those officers or the said Corporation, for the necessary certificates. This shows and establishes that Dhiren Babu was easily available to champion their cause and even though, he was not admittedly in service in 1990, after about 15/16 years, he has issued the certificates as produced and in the matter as indicated.

223. Out of the employees, whose cases are being considered now, only WW Nos. 174, 181, 188, 198, 202 (he produced his card), 206, 207 and 212 could identify the signature of Paul Babu in the permit slips and the others could not. The cases of those, who could not identify the signatures of Paul Babu, are not required to be stated and considered. Let us now consider and see how far the signatures of Paul Babu or if at all, have been duly identified by the other workmen. It is true that the permit slips, if at all, were signed by Paul Babu, in a peculiar manner and fashion and were different from the manner in which he has signed his depositions before this Tribunal and he also denied the fact of signing in such peculiar manner as appearing in the permit slips and he had nothing to do with those slips, for the post which he was holding (The earlier recording Paul Babu's signature and the stand as taken by him will appear from paragraph 29 above). But amongst others, from Exts. M-6 (last page), first 6 pages and the last two pages of Ext. M-11, W-7/30, W-7/23, W-7/26 and W-7/12 (which was of course objected to), it will appear that perhaps he was not right, as the admitted signatures in those exhibits, exhibited such peculiar way and manner of signing and on counting the strokes and strikes thereof, there appeared to have been different strike and strokes and they varied on counting the upper rounded strokes/lobes, from 10 to 13. But the permit slips now produced by WW-181 contained 14 rounded strokes/lobes and the one identified by WW-188, did not contain so many strokes. Similar, were the positions in respect of WWS. 198, 206, 207 and 212, who identified the signatures in Exhibit M-6, WW-174 could not in fact testified the signature of Paul Babu. WW-202, even though has produced his Permit slip, but has not mentioned such relevant, material and such a vital fact, in his affidavit, duly. It is worthy to be noted that although WWS. 206 and 207 could identify the signatures of Paul Babu in Ext. M-11 and M-7, yet they were not in a position to identify the other signatures, including those of Deo Prosad (WW-1). WW-212 could not also identify the signature of Dutta Babu. On consideration of the statements of the witnesses and the evidence as available, I feel that none, excepting WW-202, if at all, could really identify the signature of Paul Babu. But, since WW-202's affidavit was not clear and explicit on the point, so it becomes difficult to rely on his present improved testimony. As indicated in paragraphs 29 and 74 earlier and amongst others that Paul Babu has not only denied some of the signatures as shown, but has categorically asserted that he being an officer of the C.F.D. and not of G.S.D. at the material time, had nothing to do with the Permit slips and from his evidence, it further appeared that as District Manager, he had no authority to issue such slips.

224. The Union receipts as indicated earlier and as practically agreed by Mr. Das Chowdhury, in my view, will not help establishing the case of employment of the workmen concerned with the said Corporation, even though they may establish their membership of the said Union or have indicated them to be employees in some Department of the said Corporation. In addition to the above, while on the point, I also refer to my earlier findings in paragraph 31.

225. While on the question of identities of WWS 164 to 218, on comparison with their present appearance and the photographs as produced, either with the Identity cards, or with the certificates of the Municipal Commissioners or that of Dhiren Babu, it appeared (i) that WW Nos. 164, 167 to 173, 174 176, 177, 184, 187, 192, 193, 196, 198, 201 to 203,



205, 206, 208, 209 and 212 to 215 have no resemblance, (ii) WW Nos. 165, 166, 178, 179, 180, 185, 186, 188, 191, 194, 199, 201, 210, 211 and 216 to 218 have some resemblances, (iii) WW Nos. 171, 172, 182, 195, 297 and 204 have little resemblance, (iv) WW Nos. 178, 181, 183, 189 and 200 have clear resemblance, and (v) the two photographs as produced by WW-190, not only differed, but they even differed from his present appearance. My remarks and findings regarding the character of appearances as indicated above, will be available at the back of the affidavits of each workman. The cases of the workmen coming under (i), (ii), (iii) and (v) above, are not required to be dealt with any further and individually, in view of the observations made against them, while dealing with their cases. But, I feel that the cases of the workmen, covering under (iv) will have to be dealt with, with my reasonings. The workmen under the above serial, excepting WW-178, have not produced their Identity cards and the Identity card as produced by WW-178, was found to have been issued on April 14, 1978. But, considering the conditions, character and manner of issue of the said card, much reliance cannot be placed on the same. The other workmen under consideration, have relied on their photographs as attached and produced with their certificates. But, since the photographs as attached and disclosed now, were not of the relevant period, but were admittedly snapped much later than their period of employment and the certificates were also of a much later period, they cannot be accepted as the photographs of the employees concerned, of the time of their employment with the said Corporation, as it is common knowledge and as agreed, their present appearances have certainly changed from their earlier appearances either in 1975 or 1978. It is reasonably expected that a person, will have a change of his appearance after 15/16 years. So, even inspite of the resemblance of these group of workmen, on reasonable probabilities of the change of their present appearance from those of 1975 or 1978 and in view of the paucity of evidence, about their stay at Siliguri at the relevant time and their employment with the said Corporation, it cannot be held that they were employed with the said Corporation at the relevant time and as claimed. It should be noted that the above findings regarding the admitted change of appearance can be applied in the cases of all the other workers, whose photographs were taken after a long time from 1975 to 1978 and have been produced for establishing their identities now.

226. Apart from the submissions as indicated hereinbefore, Mr. Das Chowdhury stated that since there was not much of difference in facts, pleadings and evidence, his submissions on general points as indicated earlier, will be the same and he was not very much keen and willing to repeat them, as that would mean, only wastage of time. His earlier submissions have already been indicated in paragraphs 43 to 64 above. Mr. Ghosh also adopted the same and similar principle and procedure in the circumstances as indicated and repeated his submissions, while dealing with the cases of WWs 1 to 163. I think, in the facts of the case of these workmen and similarity of facts, evidence and so also the pleadings, there would be no cause or any justification, for finding otherwise on general points/submissions, as made in the cases of WW Nos. 1 to 163. This, of course, I say, in addition to the findings, which I have returned in the cases of this group of workmen and finally, in these cases also, I hold the same view as indicated in paragraph 113 above. The submissions that the employees concerned faced the cross-examination boldly and because of their ignorant and illiterate character, they were not expected or dared to produce fabricated evidence, are very difficult to be accepted, as a very cogent and legal submission. If there was any acceptable legal evidence, some linient view, as Mr. Das Chowdhury indicated could have been taken.

227. This is and will be my Award in respect of the cases of WWs. 164 to 218 and I hold that the issues involved, cannot be answered in the affirmative or in favour of the workmen concerned or that they could establish their identity of employment with the said Corporation.

228. I further keep this on record that in view of my findings and observations as made earlier, in respect of the respective evidence of WW-1, WW-2 and WW-4, regarding the Identity cards or the proof, character and manner of issue of them, the Identity cards as produced in respect of

the workmen Nos. WW-164 to 218, no appropriate reliance can also be placed on them.

229. Now I shall scan the evidence of WW-219 to WW-259 and it should be noted that my findings in respect of resemblance or otherwise in respect of their present identities with the photographs as produced have been indicated at the back of each affidavit. Before scanning the evidence, I must also indicate that the formats of the affidavits are the same with some exception of the certificates of the Municipal Commissioners and the erstwhile officials of the said Corporation from whom certificates have been obtained, to prove the stay and employment of the employees, with the said Corporation at the relevant time.

230. The witness WW-219 could not produce any evidence, showing that he had a Ration card in 1986. His evidence regarding age, all throughout was inconsistent. He could not even say about his present age. He has produced a certificate from Bijoy De, his Ward Commissioner. The certificate of Sri De do not establish or take us any where near to the point of his employment with the said Corporation. He has stated that he got his photograph affixed to the certificate of the Commissioner, of his own and not on the asking of the Commissioner and he has got that photograph affixed for his identity. The certificate was dated March 16, 1992 and the photograph as affixed, showed no resemblance with the appearance of the witness. He has agreed that his appearance today has certainly changed from 1975 and it was his specific statement that he has not said that in his affidavit since his co-workers got the identity cards in 1978, but he did not and for that, he got the photograph affixed. This certificate was produced by the witness for his proof, that from 1970 to 1989, he stayed at Deshbandhupara, Siliguri. In any event, the certificate of the commissioner will not establish that he could produce any evidence of his employment with the said corporation in 1970 or his employment under direct payment system from 1973 to 1975. He was not aware of the contents of the Payment shows or affixing his LTI. He has claimed to have drawn salary, like many others on affixing LTI on such sheets. It was his case that he was terminated on 21-7-1975, but he could not mention the name of the 7th month and it was his specific case that he mentioned about the 7th month, on hearing. He could of course name the month, when he deposed. He had no document to establish his termination on the date as given. It was his evidence that he has not said anything regarding the pending proceeding in his affidavit and while on the permit slip, which was produced and marked as Ext. M-11, he has said that he was not aware of the full name of Paul Babu and he has not mentioned, when he received that slip. He was also not aware of the contents of the said slip or could produce any document showing the receipt of such slip. Although he has claimed to have lost the permit slip, he was not in a position to say when he lost the same. No information was filed for such loss to the Police Station. He has not also asked for the copy of the Permit Slip from FCI. He did not produce any document showing about the strike in 1975. As indicated earlier, he identified the signature of Paul Babu in Ext. M-11. The said signature in Ext. M-11, to my mind, was also not in agreement with the admitted signature of Paul Babu. He has produced further, a certificate from Dharendra Kumar Banerjee, Ex-Denot-In-Charge, which was received by him on October, 15, 1991. He could identify the signature of Dhiren Babu, but from his evidence and the way he has deposed, there is no doubt that his LTI in the certificate has not been attested by Dhiren Babu. He said that Dhiren Babu himself wrote and the word "LTI" in the certificate and so also the words "Specimen signature". He agreed that when Dhiren Babu gave him the certificate, he was not in service and such certificate was given to him Dhiren Babu after consulting him and not after looking at any record and that apart, the certificate was on plain paper and not in the form of FCI. He further agreed that he got the certificate after 16 years of employment from Dhiren Babu, as he was informed by the Union that he will have to depose and although Dhiren Babu was not in service in 1975, he got the certificate from him, as he worked under him. The witness was admittedly terminated on July 21, 1975 and Dhiren Babu has said that he knew him till 1975 as he was the Denot. In-Charge. Such identification, as in this case, was made by Dhiren Babu after 16 years and in the manner as indicated earlier, which is very difficult to be followed and on being asked, the witness said

that he could not obtain such certificate from any present officers, as he remembered none. He has also testified that if he requires a certificate now, for any employment, he will approach Dhiren Babu, since he was not aware, if Dhiren Babu, on the date of the certificate, had the authority to grant the same. He has further agreed, not to have asked for a certificate from FCI or to know if the certificate of FCI is required to be given in their Form and he also stated that he gave his photograph for affixation in the certificate and said, the photograph was snapped in 1991. From the evidence of others, it is apparent that Dhiren Babu was not in service after his retirement, which was in 1978, but this witness said that he was not aware of such fact of retirement of Dhiren Babu. Since two photographs have been affixed with the two certificates, on being asked, the witness said the photograph in the certificate of Bijoy Babu was taken out from the negative of the photograph affixed to Dhiren Babu's certificate, but on comparison, there appeared to be difference of colour in the background of the two certificates. He was not in a position to say what prompted him to have the photographs snapped. The certificate of Dhiren Babu had the character and manner in which the same has been issued. It is very difficult to rely on the same for the purpose of establishing the employment of the witness in FCI or to establish his identity with the present appearance, more particularly when, he himself has admitted that his appearance now, has been changed from that of 1975.

231. The witness has produced 3 Union receipts, one of which was of 1974. Those receipts may at least establish his membership of the said Union, but they are not enough at all to establish his appointment with the said Corporation. His statement in the affidavit regarding Supreme Court case, was also based on hearing from the union leaders. He name, who were the persons, who signed the affidavit. Although he pointed out the signature of the President of the said Union, but he could not name him. He has not produced his identity card. From the evidence as tendered by this witness, the same appeared to be not only inconsistent, but to some extent, his evidence was not at all trustworthy.

232. The employee WW-220 has stated to have been terminated on 21-7-1975 and thereafter, he was re-employed for four months in 1978. It was the case that he received an Identity Card in 1978, signed by Dutta Babu and that contained his LTI and photograph, but he has lost that card. He has said to have received a Permit Card from Paul Babu, containing his signature, which was given in his presence and that also contained his LTI, as given in the presence of Paul Babu. But like many others, he has said to have lost the same.

233. He could not remember his permit slip number or could give his Identity card number. He was categorical in stating that Paul Babu's signature was not available in Ext. M-10, but he could identify Paul Babu's signature in Ext. M-7. The signature in his Permit Slip, also appeared to be different and discrepant from the available specimen signature of Paul Babu. He has said to have received the Permit Slip, which he has lost, 5/6 years ago, but this fact he has not mentioned in the affidavit. With the affidavit, he has not produced any evidence of employment since 1972 and he was candid enough to say that he does not remember, whether he knew the signature of Dutta Babu. He claimed to have received the Identity card, which he has lost, under the signature of Dutta Babu. He was not aware of the full name of Paul Babu, but after about 16 years he could identify his signature in Ext. M-7 although he could not identify such signature in Ext. M-10. He was not definite about the same being made by him in respect of his employment in 1972. He was not in a position to produce any evidence about his workings under Direct Payment System in 1973 to 1975 and he said that, for one month, he worked under a contractor. But, the above fact has not been stated in the affidavit. His evidence about re-employment and workings under FCI was not very convincing. He could not also say the four months, for which he worked in 1978, before his termination and had to agree that he had no document to show his termination in 1978. Like the earlier witness he could not also name the 7th month, although he stated that he was terminated on 21-7-1975. He also did not produce any evidence showing that those who worked in 1975, got employment in 1978. His statement regarding the Payment Sheet was based on hearing from Deo Prosad.

234. He has stated to be one of the employees amongst 464 employees as mentioned in the Supreme Court case. But, such statement was also based on hearing from Deo Prosad and his claim as made now, was also on the basis of hearing from Deo Prosad. But such fact, he has not mentioned in the affidavit. His evidence regarding age was equally discrepant. He could not show, by production of any document, about his stay at Ranabasti cote and the certificate of the Commissioner, Shanti Chakraborty as produced by him, also takes him nowhere near, to establishment of such fact. He was not in a position to produce any record regarding strike in 1975. He could not mention when Paul Babu gave him the slip and could not pay anything about the contents of the same, excepting that the same had the signature of Paul Babu and his LTI. He could not mention the contents of the Permit Slip, which he has lost 5/6 years ago. But, he has not admitted, either asked for copy of the same from FCI or had lodged any information to the Police Station, for such loss. He identified the signatures of Paul Babu in Ext. M-7, where the number of strokes were different from that of the admitted signature of Paul Babu. He has not produced any evidence regarding his workings under Direct Payment System or that the strike continued for one month in 1975 or that he worked under a contractor for one month, in 1972.

235. He could not further mention the date, when he got the Identity Card or the contents of the same. Excepting that he said the same contained his LTI, the signature of Dutta Babu and Deo Prosad, he has not mentioned the date and year of the Identity card and admittedly, for such loss, he has not filed any complaint. He was ignorant about the writings in the Identity card or could produce any document showing that he received such card in 1978. He has produced 3 Union receipts, none of which was of the relevant period. Like many others, he has said that apart from the receipts, he has produced, the other receipts he has lost. He could not mention the contents of the Commissioner's certificate. But, he has said that the photograph as affixed there, was snapped in 1990 and he gave the photograph to the Commissioner of his own and not on asking and the photograph was affixed by him, as proof, as he thought, without the same, he could not establish his identity. Although he was illiterate yet he could have such idea. He has agreed that his appearance in 1992 has certainly changed from that of 1975 and he was not aware, what was his age at that time.

236. He has also, like WW-210, produced a certificate from Dharendra Kumar Banerjee, who, admittedly at the time of issuing the certificate, was not in service and gave the certificate on a plain paper and without any seal of FCI. The said Banerjee Babu has admittedly given the certificate after hearing the employee and not on consultation of any record and the employee could not produce any evidence showing that he worked under Dhiren Babu. He has admitted that he has taken the certificate after 16 years of his termination, since he thought that the same would be necessary in this case, which is pending since 1975. He admitted, to have taken the certificate on the advice of Deo Prosad and Dhiren Babu did not possess any records of the employee which are lying with FCI. Dhiren Babu was known to him and for that, he got the certificate from him and not from other officers. He agreed that not only his papers, but also of those, who worked under FCI, will be available with them, but if he requires a certificate now, for any employment, he will approach Dhiren Babu. He could not say about the contents of the certificate of Dhiren Babu or whether, he had the authority to grant such certificate, even when he was aware that Dhiren Babu was not working with FCI. He has testified that the words "Specimen signature" in the certificate, was written by Dhiren Babu, so also the word "LTI" but he could not identify the signature of Dhiren Babu around the word LTI, and although he was aware of his signatures, he could not identify them. Admittedly, this witness has affixed his LTI in Dhiren Babu's certificate and did not sign the same although Dhiren Babu has said about his specimen signature in his certificate. The photograph as affixed in the certificate of Dhiren Babu, was said to have been snapped in 1990 and the witness gave the same to him of his own and not on asking. He has said to have got the photograph affixed, as he has lost the Identity card and he was candid enough to say that he did not himself affix his photograph in the certificate. He could not produce any evidence showing that in 1986, he had his Ration card. He has produced the Ration card of

1990 and strangely enough, there was corrections/interpolations in the Ration card, in respect of his Ward number and he could not also say, who made such corrections/interpolations, which again, were not under any seal. He was quite unaware, not only of his age, but also of the ages of his wife and also of his daughter.

237. On the basis of the evidence as produced, at least it can be held or observed that the witness was a resident of Siliguri, but nothing more and more particularly in respect of his employment with FCI. His evidence was not absolutely free from mistakes and inconsistencies. It is also strange that he only remembered the signature of Paul Babu, but not those of others and as stated earlier, he has identified the signature of Paul Babu in Ext. M-7.

238. WW-221 has produced 6 Ration Cards and his Ration Card. The front portion, so also the back portion of his Ration Card was absolutely illegible. As such, a hand written copy, which was not a true copy, but said to have been compared with the original by the learned Advocate, has been filed. The other Ration cards, which the witness has claimed to be belonging to his family, admittedly showed that they were issued by Shanti Chakraborty, who was the Commissioner of Siliguri Municipality. For the reasons as indicated earlier and which I have already observed, the said Sri Chakraborty, as Ward Commissioner, had no authority to grant and issue such Ration Cards. In fact, no contrary evidence have been produced to establish the identity and stay of the witness at Siliguri. The witness has produced a certificate again from Shanti Chakraborty, Ward Commissioner. The signature of Shanti Chakraborty was not proved. He has further produced a certificate from one Narendra Nath Sarkar, an ex-employee of FCI. He has said that since he was the Junior Godown Keeper of FCI, so he knew the deponent till 1975. This certificate was issued on May 27, 1992 i.e. after about 17 years, when the employee's service was terminated. It was his evidence that in 1975, he was terminated and while in service, in that year, he received a Permit Slip from Paul Saheb, affixing his LTI and Paul Saheb also signed in his presence but like others, he has also lost the said slip. While on the Ration Cards, the witness has said that they were given to him by Shanti Chakraborty, the Ward Commissioner, since he asked him about the Ration Cards. He was not aware, if Shanti Babu had any authority to grant the cards and he was also not conscious about the contents of the cards or the writings therein or the signatures appearing there. The entries of the Ration Cards, the years as shown, inspired no confidence for establishing the genuineness. The Ration Cards were also without any signature or LTI. His evidence regarding his age, the ages of other card holders, was not very convincing. There was certain entries made in red at the original Ration Card of the witness, which has already been returned under order dated February, 24, 1990, but in the compared copies as filed, those entries are not shown and for that reason, I feel that it is very difficult to rely on the validity of the copies as mentioned above.

239. The witness could not produce any convincing evidence regarding his stay at Siliguri from 1970 to 1989 and although he has produced 4 Union subscription receipts, he was candid enough to say that it would not be possible for him to identify the signatures in the receipts. He has not produced any document of his workings in FCI in 1970 or any document showing his workings under Direct Payment System from 1973 to 1975. He could not also produce any document showing his termination on 21-7-1975. He has not asked for production of the Payment Sheets from FCI and was not aware of the contents of those sheets. He could not produce any evidence of the strike in FCI in 1975 and was not aware, if he has mentioned his permit slip number in his affidavit. He was also not aware of the contents of the permit slip and if such fact has been stated in his affidavit. He has said that although he has lost the permit slip, but such fact was not mentioned by him to his drafting lawyer and he has not lodged any information to the Police Station, for the loss of the permit slip. Is it not strange that when he has lodged information to the Police Station for loss of the Ration Card, he has not lodged such information for the loss of permit slip? Admittedly, he has not informed FCI about such loss or asked for a copy of the slip from FCI. He has said that he received the certificate

of Shanti Babu, 10/15 days before his deposition, but was not aware of the contents of the same and the photograph as affixed, was snapped one year ago and the said photograph was printed from the negative, which is also one year old. These facts have not of course been mentioned in the affidavit and it is nothing but an attempt to improve the case. He has further said that original and initial photographs as received by him, were given to Deo Prosad and he got the photographs snapped on the asking of the Union Leader viz. Deo Prosad. He agreed that he give the photographs without knowing the requirements of them. Deo Prosad (WW-1)'s evidence is not specific on the point.

240. It was his case that Naren Sarkar, was the Junior Sector Incharge, but such fact has not been mentioned in the affidavit and he could not say, whether such fact was stated by him to his drafting lawyer. On being asked he said that he has no evidence to show that Naren Babu was Sector Incharge (Junior) and he also said that there is no record to show that he worked under him. He also said that Naren Babu was in service and the certificate at the time when Naren Babu was in service and the certificate was not in Form of FCI and furthermore, the same was issued by Naren Babu on hearing him and not after consultation of the records. He said that if he requires a certificate now, he will approach Naren Babu, as he knows him and he agreed that the present certificate was obtained after 17 years from 1975. He was not aware of the contents of Naren Babu's certificate. He was of course not aware, if Naren Babu had the authority to grant such certificate to him and he further said that it was not possible for him to say, if after retirement, Naren Babu continued to be an officer of the FCI or had lost such character. It was his case that he got the photograph affixed to Naren Babu's certificate, for establishing his identity. On being asked, the witness could identify Ext. M-6 the Payment Sheet and also identified Ext. M-7, the signature of Paul Babu. Even though he could not identify the signatures of the signatories in the Union receipts. Thus, is it not strange that he could remember and identify the signature of Paul Babu after about 17 years, unless properly briefed and tutored?

241. The photograph as produced had no resemblance with the present appearance of this witness and he could not disagree that his appearance today, has changed from his appearance earlier. The evidence of this witness was not only false, but to a large extent, the same was inconsistent and very difficult to be relied upon, apart from being tutored. The evidence as produced, have at best established that he was a member of the said Union and was staying at Siliguri, but in my view no cogent evidence was produced, showing or establishing that he was working with FCI at the relevant or at any time and so also his identity of employment with the said Corporation.

242. WW-222 has not produced his identity card, but to establish his identity or employment, he has produced a certificate from Narendra Nath Sarkar, with the same defects as mentioned in the case of WW-221. The photograph as affixed, showed some resemblance of the present appearance of this witness, although on such basis, it cannot be held that he was the employee concerned, who was employed in FCI, in 1975. Naren Babu has testified to be knowing him till 1975 and his certificate with the photograph affixed, was taken after 17 years from 1975. In his evidence, he has said, Naren Babu as a Junior Godown Keeper, which he was not. He however agreed that his appearance today has changed from his appearance 17 years ago and he felt the necessity of the certificate after hearing from Deo Prosad. He has said to have received the certificate from Naren Babu one month ago, but he agreed that he had no document to show that Naren Babu was the Junior Sector Incharge and he could not produce any document showing that he has worked under Naren Babu. He was not aware of the contents of the certificate. He agreed that at the time when Naren Babu issued the certificate, he was not in service and the certificate was not in any Form of FCI and with their seal. The photograph as affixed, was admitted to have been snapped 2 years ago and his evidence regarding age and many others, I feel, were inconsistent. He has further agreed that he took certificate from Naren Babu after 17 years from 1975, for the purpose of depositing in this case which was told to him to be necessary by Deo Prosad. He could not say, if at the time of issuing the certificate, Naren Babu had the authority and he has said that he has never asked for any certificate from FCI, for his employment. He was not

aware, if a certificate for employment of a person working under the said Corporation, will be given by them or not. But, he agreed that the records of employees employed under FCI are with them. While on the certificate of Naren Babu, he said that he was not aware, who wrote the same and he will not be able to recognise the signature of Naren Babu, since he is illiterate. But, he said that he signed the certificate in his presence. It was his specific evidence that in 1975, at Dabagram, Naren Babu a Junior Godown Keeper, but he was not aware, who was Godown Keeper at that time or who was the Depot. In-charge. He has of course said, Naren Babu was Junior Depot In-charge and was also called Junior Godown Keeper. But, in his affidavit, he has specifically mentioned that Naren Babu was a Junior Godown Keeper. He could not name any other officer at Dabagram in 1975, apart from Naren Babu. This fact was not only strange, but will have to be considered in believing or disbelieving the witness. His knowledge of age was absolutely nil and he could not establish by any evidence that from 1971 to 1989, he was staying at Siliguri.

243. The witness has not produced any evidence, showing his employment under FCI since 1971 and has agreed that with the affidavit, he has not also disclosed any document, showing his employment from 1973 to 1975, when he worked under Direct Payment System. He could not say definitely, about the contents of the Payment Sheets and has agreed that he has not asked for such sheets from FCI. It was his evidence that the signatories of the affidavit signed in his presence, but, it would not be possible for him to recognise any of the signatures. He has not produced any evidence of termination in 1975 and his evidence was that he was one of the 464 employees which was based on hearing from Deo Prosad, but he has not said such fact in his affidavit. His statement regarding the Supreme Court case was also on the basis of hearing from Deo Prosad. He has produced 3 Union subscription receipts, one of which was of the relevant period. But, he was not aware of the contents of those receipts. He said that the receipts contain the signature of Hardwar Singh and Deo Prosad and Deo Prosad informed him about his signature in the receipts, but he said, it would not be possible for him to recognise the signature of Deo Prosad.

244. The witness has produced 2 Ration Cards. The front portion of the first one, was not legible and the back portion of the other Ration Card had the same character. He has agreed that the Ration card do not contain any LTI. He could not produce any document, showing about the strike in 1975 and was not aware what was his Permit slip number; and he has agreed that in his affidavit, he has not mentioned the permit slip number. He was also not aware of the contents of the permit slip and only 2/3 months ago, he was realised that the permit slip was not with him and for such lost he has not lodged any General diary at the Police Station or informed the said Corporation for such loss or asked for any copy from them. He could not establish by any cogent evidence, about the loss of the permit slip. Although the witness said it would not be possible for him to recognise the signature of Deo Prosad and Sarkar Babu and those, who have signed the affidavit, yet on asking, he said, strangely enough, that he could recognise the signature of Paul Babu. This shows and establishes that Paul Babu's signature was shown to him and he was duly tutored in that behalf.

245. The evidence tendered takes the witness no where near the fact of establishing his employment with the said Corporation at the material time. His evidence may at best be enough to establish his membership of the Union or his stay at Siliguri and nothing else. The demonour of this witness was far from being satisfactory and in my view, he, not only gave false and inconsistent evidence, but his evidence was also a tutored one.

246. WW-223, who is hard of hearing, has not produced his identity card and instead thereof, he has filed a certificate for his identification from Sri Narendra Nath Sarkar, whose particulars have been indicated earlier, on a plain paper and could not say, if the seal of the said Corporation was there or not. This certificate was issued by the said Sri Sarkar, after hearing the employee concerned and without consulting any records, and the same has admittedly been obtained,

after about 17 years, of the termination of the employee in 1975. The employee has said that Sarkar Babu did not explain to him the contents of the certificate and he put his LTI on the asking of Sarkar Babu. He was not given the certificate on the same day. He was not aware why the certificate was issued and so also the manner and way the certificate has been obtained.

He has ofcourse stated that Sarkar Babu was in service when he certified. This fact was not true, as would appear from the evidence of others. It was ofcourse his evidence that the LTI and the photograph in the certificate, were his. The photograph as affixed, of course, has some resemblance with the present appearance of the employee. But, that will not prove his appearance 17 years ago and like earlier employees, he has said that he considered the concerned sheet as Payment Sheet, as Babus and Sardars called them as such and those sheets were lying with the said Corporation. These sheets, practically in respect of all the employees, including this employee, was not available or could be produced and he has also agreed that he has not asked for production of them. He has stated that his statement regarding the fact that he is one of the employee, within the 464 employees as involved, were made on the basis of hearing from Deo Prosad (WW-1), but such fact has not been stated in his affidavit. The certificate of Bejoy Babu, the Municipal Commissioner, was in the same language like his earlier certificates. The particulars of the place where the employee has stated to be staying have not been definitely indicated in the certificate. The employee has affixed with this certificate, a photograph of recent origin and has claimed the same and so also the LTI in the certificate, to be his. He has agreed to have the said photograph affixed, for depositing here, but could not recognise the signature on the certificate. Practically, like all other employees, this witness has said to have, lost his Permit slip. He has claimed the photograph and the LTI in the certificate to be his and has also, like others, claimed that he has affixed his LTI thereon, in the present of Paul Babu, from whom, he received the same and Paul Babu also signed the said slip in his presence. But, he was not in a position to identify the signature of Paul Babu. It should also be noted that he could name the signatories of his affidavit, but could not identify their signatures. On consideration of the totality of the evidence, I find the same was not correct and while deposing, the witness sought to improve his statements as made in the affidavit and his statements and evidence was false to a great extent.

247. WW-224 has produced an Identity Card, bearing No. W-1/256, which was dated April 14, 1978, which again, he has said, to have received from Dutta Babu and claimed that Dutta Babu signed in his presence. On receipt of W-1/256, he has said to have gone to Bihar. But, this fact has not been indicated in his affidavit. In his affidavit, the witness has said that he could not trace out his Permit Slip. But in his deposition, he has said to have lost the same and he could not mention the date when he lost the same. It was his evidence that Paul Babu wrote the slip, but his evidence was not clear and certain regarding the designation of Paul Babu. As, from the way he has deposed and his demanour in Court, it appeared that he was duly tutored, no question was asked to him regarding Permit slip. He has said to have lost the Ration card of 1987 and for that, he has lodged an information to the P. S. But, strangely enough, for the loss of the Permit Slip, no such information has been lodged. He could not ofcourse mention the concerned G. D. number. His definite evidence was that he worked under Direct Payment System and those papers were lying with the said Corporation. But, he has neither produced nor could produce any such record. He has stated to have produced the Union Receipts, for the purpose of deposing. He has testified to have said to the Municipal Commissioner, his father's name as Kaldi Paswan. But, there is no mention of such fact in the affidavit, although he has said that such fact was stated to his drafting lawyer. He could not remember, if he has said anything regarding the Supreme Court case. He could ofcourse name his drafting lawyer. He was not of course sure about the file of Niranjana Babu. Initially, he could not name the 7th month, but ultimately, he mentioned the same as "July". He has said to have received payments for four months in 1978. This

witness appeared to be intelligent and in his deposition, he tried to improve his case, from the case as made out in the affidavit. The present appearance of this witness appeared to have some resemblance with the photograph in the Identity card. He has said that he could not give to Identity card to the said Union because of his absence.

248. WW-225 has produced his Identity card, bearing No. W-1/221, which was dated May 13, 1978 and it appeared that she has no resemblance presently, with the photograph as affixed in the Identity Card. She has neither produced any certificate of employment from any of the authorities or for her stay, as was done by other employees nor has she produced her Ration Card. Her case was that, she was terminated on 21-7-1975 and although she stated to have been employed under a contractor, she has not explained or disclosed such fact in her affidavit. The writings in her Identity card were worthy to be looked into and noted and on the basis thereof, it is difficult to place any reliance on the same. She has submitted Union Receipts, apart from making a statement that she received a permit slip, which she has lost. This is the usual story in respect of the Permit Slip as stated, if not all, but practically by every one of the employees. On being asked, she stated, she had no idea about the contents of the affidavit as filed and her evidence regarding age, was absolutely unreliable and could not be taken any notice of. Although, she has stated about her workings in FCI, on being asked, she agreed that those statements were not made by her to her drafting lawyer. She could not say, what post was held by Paul Babu, who issued the Permit Slip to her and strangely enough, regarding loss of the Permit Slip, she has said frankly that she has not mentioned that fact to her drafting lawyer. This witness is a widow but on being asked about the date of death of her husband, she said, she does not remember the date. It is really difficult to visualise that a widow will not remember the date of her husband. In her Identity card, there were signatures of Deo Prosad and J. Banerjee. But, she could not identify any of the signatures. The first of the Union Receipts as produced amongst the 3, bore the date of 1974, although her case was that she was employed in 1972 and since then, she was the member of the said Union. Her evidence and statements, as made in the affidavit were inconsistent. The witness was aware of the contents of the affidavit, even.

249. Witness WW-226, who has some resemblance with the photograph and his appearance now, has not produced the Identity card. He has said to have received the Permit slip from Paul Babu, which fact, he has said to have narrated to his Lawyer, but had to agree that Paul Babu had not signed the said slip. He has not said anything about the Identity card in his affidavit. But, it was his evidence that Datta Babu signed the same. His evidence was that he called records as the Payment Sheet on being informed such, by the Babus of FCI. He has said to have worked for 4 months in 1978. Although he was terminated on 21-7-1975, he could not, like many others, mention the name of the 7th month. He could not remember the day when he in 1978 worked and he did not remember, whether the fact of such working in 1978, he has informed to his drafting lawyer. It was his evidence that in 1972, he was 21 or 22 years, but he could not say what was his age in 1989 and 1990. Bijoy Babu is a Commissioner of Ward No. XXIX and although this witness was not the resident of that Ward, he has produced the certificate from Bijoy Babu and he has said to have given the photograph to Bijoy Babu for affixing in the certificate, as according to him, there are others, in his name. He was not even aware of the name of Bijoy Babu. He has agreed that his present appearance has changed from 1975 to 1978. He has also produced a certificate from D. Banerjee and his evidence was that he could not sign and the said Sri Banerjee wrote the certificate in his presence, but such signature was made inside the room and further, Sri Banerjee did not sign the certificate in his presence. Admittedly, this D. Banerjee was not in service of FCI, when he gave the certificate, stating that he knew the witness till 1975, as he was working under him. The certificate of Sri Banerjee was also not in the form of FCI. He could not say what were the contents of the Union Receipts or who were the signatories and he could not identify their signatures and he was also not in a position to identify the signature of Paul Babu. It was his

evidence that he met the drafting lawyer 2 or 3 days prior to the date of deposing and the affidavit was drafted in his presence. The evidence of this witness is not only false, but to my mind, the same was inconsistent too, in many respects.

250. Witness No. WW-227 did not produce his Identity card and his demeanour while deposing, was worth to be looked into and considered and it further appeared that in his evidence, he was trying to fabricate facts. He has deposed to have been terminated on 21-7-1975, but like others, he was not in a position to name the 7th month. His evidence was that the permit slip was signed by Paul Babu, which was also signed by him but he could not remember what were the writings in the Permit slip and has ofcourse stated the name of Paul Babu, was S. B. Paul. His evidence was, he read upto Class I or II and he received his Ration card in March 1991. But there appeared to have discrepancies in his Ration card. He has stated that he does not pay Municipal Tax and then said, the land on which he is staying, is a vested land, but he has no evidence to show that the same has been vested and settled with him. He has stated that the copy of the permit card is lying with FCI, but he as not asked for a copy of the same from them. Although, he was specific about the date of his termination as 21-7-1975, but on being asked, he could not remember or mention the date, when he was deposing. He has produced a certificate from Sri Bijoy Deo, a Commissioner, although he has said that he was staying at Dab Gram. He has said to have received the Identity card in 1978, but he confessed that he did not work in 1978. His evidence was, in Payment Sheets, his name was written in English, but such statement was absent in his affidavit. The Ration Card as produced or the certificate of the Commissioner, in my view and that too like other employees, will not establish the actual workings of the witness in FCI or his identity of employment and they may at best, establish the stay of the witness at Siliguri. The certificate of Naren Sarkar, an officer of the FCI and who had retired on the date of making the certificate, in my view, cannot be relied upon, as the signature of Naren Sarkar has not been proved and he was admittedly not in service of FCI, when he gave the certificate. The certificate was not in the form of FCI and the same in my view, was not enough to establish the workings of the witness in FCI, at the relevant time.

251. WW-228 has produced his Identity card bearing No. W-1/212, dated May 13, 1978. His evidence was that he was working since 1970 and while working in 1975, he received the Permit Slip. He further deposed that he was terminated on 21-7-1975 and thereafter, worked in 1978. His evidence was that he received the Identity card, signed by Banerjee Babu in 1978. He stated that the number mentioned in his Identity Card was C-8. It appeared that the witness's name, as appeared in the affidavit, was Naran and also as Narayan and he said, he was known by both the names and his friends also call him in both such names and he signs both the names. He could mention that the present affidavit was signed by Niranian Babu and Gouranga Babu. He has said to have paid subscription of the Union in 1991, but has said that he has not received the receipt for the same and the same was his evidence in respect of 1981. He said that receipts as produced, were signed by Hardwar Babu and Deo Prosad. Regarding the fact whether he made the statement regarding his workings to his drafting lawyer in 1970 or under a contractor, he was specific enough to say he does not remember, whether such facts were told to his lawyer. It should be mentioned that at one stage the witness mentioned the 7th month as July. This witness was heard of hearing and his statements as made, were contradictory and inconsistent with the statements made in the affidavit in many respects and to my mind, he was not a truthful witness. He has ofcourse identified the signature of Paul Babu in Ext. W-7/30, which ofcourse, was not tallying with the manner of writings, specially in respect of the lobes and rounds of the peculiar signature of Paul Babu, as appearing in Ext..... In fact that was his admitted signature.

252. WW-229 has not produced his Identity card. But has produced photograph with the certificate as annexed to the affidavit and it appeared that he has some resemblance with the photographs and the present appearance. He has produced a certificate from Narendra Nath Sarkar, but he was not aware of the full name of the said Sri Sarkar. He



has said, Sri Sarkar was not in employment of FCI, when he certified. The certificate of Sarkar Babu was in the same line like that of the certificate of WW-227 amongst others and the same was not in the Form of FCI or given at a time, when he was in service. The witness has agreed that his appearance on the date of deposing has changed from his appearance in 1975 and automatically, it will thus in my view, appeared that his appearance was changed when Sarkar Babu gave the certificate. Although he has stated to have received the Permit Slip, he could not produce the same as he said that on searches, he could not get it. There is no evidence of his workings under Sarkar Babu, who as mentioned earlier, has retired and was not in service at the time of issuing the certificate. He has said that Sarkar Babu was depot Incharge at the time when he worked and the photograph, which was affixed in his certificate was snapped 2 1/2 months ago, from the date of his deposition. But, he could not say what was his age at that time and he was candid enough to say that the photograph was snapped and attached to the certificate, for the purpose of deposing and he got the said photograph affixed to Sarkar Babu's certificate, not being asked by any one. It is really difficult to agree that an illiterate person like this witness, will have such knowledge that the photograph would be necessary to be affixed for the purpose of deposing. It was his evidence that Paul Babu gave him the Permit Slip, which like others, he has lost. The tenure of his evidence was on the basis of hearing from Deo Prosad and the certificate of Bijoy Babu, the Commissioner, he has said to have obtained, 1 year 8 months ago, from the date of his deposition. On the basis of his evidence and so also the certificate, it is very difficult to hold that his identity of employment with FCI, has been established legally or otherwise, beyond any reasonable doubt. His evidence, further appeared to be inconsistent with his statements in the affidavit.

253. The workman WW-230 has not produced his Identity card, but instead thereof, he has produced a certificate from Narandra Nath Sarkar, to establish his workings in FCI and a certificate from the Municipal Commissioner, Shanti Chakraborty to establish his stay at Siliguri. He could identify the signature of Sarkar Babu in the certificate, but said that he was not aware of the full name of Sarkar Babu and his certificate was on a plain paper and not in the form of FCI or with their seal. It was his evidence that Sarkar Babu wrote the certificate on hearing him and not after consulting any records and excepting the certificate, he had nothing to show that he worked under Sarkar Babu. He could not also say the date when he received the certificate from Sarkar Babu, but said, the same was received 2 1/2 months ago. He was also not aware of the contents of Sarkar Babu's certificate and said that after writing the same, Sarkar Babu has not explained the contents to him. He has agreed that Sarkar Babu was not in service when he gave the certificate and since he required the certificate from Sarkar Babu after long lapse of time, he had said that Deo Prosad WW-1, told him about the requirements of the certificate and he thought that perhaps he required the certificate for appearing before the Tribunal. The photograph as affixed in the certificate he has said that the same was snapped about 2 1/2 months ago. His evidence regarding his age, like many other employees, was not convincing. He was aware that if one requires a certificate from FCI, for any present employment, he has to approach them, but he has not gone there, out of fear. This fact, he has not mentioned in his affidavit. Is it not strange, although an illiterate person, he gave the photograph to Sarkar Babu of his own and not by the asking of anybody. He has further agreed that he worked in the Central Godown, where the Depot Incharge was Bose Babu, his name again, was not known to him. It was his evidence that he got the Commissioner's certificate on July 9, 1992 and he was not aware, what were the contents of the same. The photograph as affixed with this certificate, was also said to have been snapped by him 2 1/2 months ago and he gave the same to the commissioner of his own and not on his asking, as his proof. He has produced the Union receipts for proof of his membership. He had no document to show that in 1986, he had the Ration Card and he got the present card on deposit of the same. He has stated, there is no LTI of his in the Ration card. He was not even aware of the date of his birth and was candid enough to say that he does not know what was his

age in 1972. He could not produce any evidence to show about his stay at Sarban Nagar, Siliguri from 1972 to 1989. But, he has said that he lives in a shanty on Municipal land and that too, without any permission, but these facts have not been said by him in his affidavit, although his evidence was that the Commissioner knew about his stay in a shanty, but in the Commissioner's certificate, nothing has been mentioned about such stay in a shanty. About payment sheet, he said that he considered the same as such, on hearing, but has not stated such circumstances as deposed on this account in his affidavit. His evidence regarding the pending proceedings and so also the proceedings of the Supreme Court were on hearing, but such fact, he has not mentioned in the affidavit. He could not mention the full name of Paul Babu or the contents of the Permit slip and the date when he received the same. Although he claimed to have lost the Permit slip, but he has agreed that in his affidavit, he has not mentioned to have lost the same one year ago and has stated that he has no document to establish such loss. The evidence of this witness appeared to me to be absolutely false, inconsistent and tutored too. It should be noted that the present appearance of the witness has some resemblance with the photographs as produced, but that in my view, will not be enough to establish that 17 years ago, he was employed in FCI and evidence as produced, was not enough to establish his employment with FCI or to show his identity of employment with FCI. It cannot be denied, rather it is not unreasonable to note and hold that 17 years ago, he had not had the same appearance as of today and the certificate of Sarkar Babu will not be enough to hold that he worked in the said Corporation 17 years ago.

254. The workman WW-231 has not also produced his Identity card, to establish his identity of employment and stay. He has produced two certificates, one from Bejoy Babu, Commissioner and the other from Dharendra Kumar Banerjee, whose particulars have been indicated earlier. With those certificates, he has affixed to photographs which differed. He was not aware of the contents of the Union receipts as produced by him or who signed those receipts. The statements as made by him, regarding the Supreme Court case in the affidavit, he has said to have made, on hearing from the local union leaders, but such fact, has not been stated in the affidavit. He was not aware either of his age or the date when he lost his father, although he vaguely stated that he has lost his father, when he was young. Excepting stated that the Commissioner's certificate, contained his name and his father's name, he was not aware, what else were written there. It was his evidence that the photograph that has been affixed to the Commissioner's certificate, was snapped in 1990 and at that time, he was 42 years of age. It was his evidence, like others, although illiterate, that he gave the photograph to the Commissioner of his own. He was not aware of his age in 1975, but said that too in my view strangely, that his appearance in 1975 and on the date of his deposition remained the same, excepting that he has grown old. He got the certificate from the Commissioner, for deposing in this case. He could not produce any document to show that in 1986, he had a Ration Card and said that the same is lying in the supply office. He could not also produce any evidence of deposit of 1986 card in the Supply Office and in lieu thereof, he got the present card. He was not also aware of the writings in the Ration Card and he said that the same do not contain his LTI. He has said that when he got the certificate from Dhiren Babu, which was on June 26, 1990, his father was alive. This statement became relevant as Dhiren Babu's certificate was received on July 25, 1990, when his father was said to be not alive. Barring the certificate of Dhiren Babu, he had no evidence to show that he worked under him. He was also not aware of the contents of the said certificate, but said Dhiren Babu's certificate was on a plain paper and was not under the Seal of the said Corporation. It was his evidence that at the point of time, when Dhiren Babu issued the certificate, he was not in service and Dhiren Babu issued the certificate, after hearing him and not after consulting the records. He got the certificate of Dhiren Babu as stated, since he was informed by the Union that he will have to come to depose, with all the papers. He has said that if he presently requires a certificate for employment, he will approach Dhiren Babu and not the said Corporation, but if he is required to receive any payment for his earlier workings with them, he

should approach the said Corporation. He was not aware, if Dhiren Babu had any authority to grant the certificate, as in this case. He could not recognise the signature of Dhiren Babu, but he said this much that he has affixed his LTI and Dhiren Babu signed the certificate in his presence and the photograph as affixed in Dhiren Babu's certificate, has been snapped in 1990. But, he said that the two photographs as mentioned earlier, were snapped separately. At least he had the intelligence to know the implication of the question put to him on the basis of the two photographs as mentioned earlier. It was his evidence that he gave the photograph to Dhiren Babu for his identification and he has said that since some employees have got the Identity Card, but he has not, he got the photograph affixed. This fact, of course has not said in his affidavit. He could not produce any evidence regarding his stay at Deshbandhupara, excepting the certificate of the Commissioner that from 1972 to 1989, he was staying in a shanti, which fact he has said that Bijoy Babu knew. But, he has not said anything in that respect, in his affidavit. He could not mention his Permit Slip number and has said in his affidavit, he has not mentioned what were the contents of the Permit slip. Although, he has said that the copy of the Permit slip was lying with the said Corporation, but he has agreed, not to have asked for such copy from them. It was his evidence that he had his Permit slip, but could not get the same at the time of coming to depose, on searches and has not lodged any Diary for the same. He made the same statement regarding the knowledge about the Payment Sheet like other employee, but such fact, he has not specifically said in his affidavit. He has also not asked for a copy of the payment sheet from the said Corporation, although he has said to have been terminated on 21-7-1975, but he could not name the 7th month. He could not also say, on what date in 1972, he entered the services or when the Direct Payment System started, excepting saying that perhaps in 1973 the same was started. On a question by me, regarding two photographs and when they were snapped, the witness has said that the photograph in Dhiren Babu's certificate was perhaps snapped earlier than the photograph affixed in Bijoy Babu's certificate. The present appearance of the witness had some resemblance with the two photographs as produced. But they will not, in my view, establish his employment with the said Corporation or his identity of employment with them, which was terminated at least 15 years ago. The evidence of the witness appeared to be inconsistent with the statements in his affidavit.

255. The workman WW-232 has not produced his identity card and sought to establish his identity, by production of a photograph attached to a certificate, issued by the Gram Panchayat. But the said photograph was not either attested or his address mentioned therein. The number of the certificate is W-7/132. Like many other employees, he has said to have lost his permit slip, but as usual, he has not taken any steps to lodge any information, for such loss. He has also not asked for a copy of the said permit slip from the said Corporation, although he claimed that such copy was lying with them. It was his evidence that he lost his Ration card and after such loss, he as applied for a duplicate copy of the said card. It was his evidence that he has four members who are also staying with him. His evidence regarding age, was not convincing, but discrepant too and most of his statements in the affidavit, were based on informations received from Deo Prosad WW-1. He has said to have worked in the said Corporation, but was unable to produce any convincing evidence for the same. It was his further evidence that Anchal Proddhan who has issued the certificate knew him to be staying at Bhaktinagar, Siliguri. It would further appear that on the loss of his Ration card bearing No. 445071 and 445072 both dated February 6, 1988, he applied to the Officer-in-charge Bhaktinagar Out Post, to initiate an enquiry as early as possible, so that, he can get those Ration Cards. But, the numbers written in hand in that information, were not tallying. In fact, it will appear that he has mentioned many numbers of the Ration Cards and more particularly, about 6 of them. He has further produced a certificate from Dhiren Kumar Banerjee, as usual like many others, for establishing his employment under the said Corporation. It was his evidence that subscription receipts as produced, were not in his house on May

20, 1992 and on that date, they were with his brother. He has further stated that he could not get the other receipts. It was his evidence that not only his house, but 10 to 20,000 houses were demolished by storm. His evidence was that the Ration cards, which he had in 1988, were obtained through application made to the Panchayat and although there is a Ration Officer in the area such cards are issued by the Panchayat. He also deposed that for such loss, he made an application for Ration card to the Anchal Proddhan through one Susil Babu, after supplying some damaged papers including the xerox copy of the old Ration card. Unfortunately, the said Susil Babu has not been examined in this case. It was his specific evidence that Panchayats, do entertain applications for Ration cards and as such, he applied to them for such cards. He has said to be drawing Ration on the basis of the receipts marked Ext. W-7/31 and such drawings were on the basis of documents issued by the Inspector and marked Ext. W-7-32, which receipts, he has again stated to have been issued by the Inspector, on his asking and he has further deposed that such Inspector visits the place once a week and he gave the documents as mentioned above, after hearing from the Proddhan, when the application was made. It was his knowledge that the Inspector had the authority to issue such document as Ext. W-7/32, but could not say, if any such documents were issued by the Inspector to others at the instance of the Proddhan.

256. His evidence regarding Union receipts, was not very satisfactory and he had to agree that in his affidavit, he has not mentioned the way and the manner, in which he is drawing ration. He was not in a position to remember his permit slip number or on which date, the same was issued and he could not also mention, the full name of Paul Babu, from whom he was said to have received the permit slip. He could not establish that in 1975, he got the permit slip. His statement regarding the proceeding pending here on the proceeding before the Supreme Court, were based on hearsay. It was his evidence that the certificate of the Proddhan, was written in his presence and he told the proddhan, the name of his father. The certificate is a typed one and blank portions are filled in by hand. He obtained the certificate for depositing in this case and it was his evidence that he gave the photograph for affixing, for his proof and he also got the certificate, for depositing in this case. He could not produce any evidence of his working under Dhiren Babu and has stated that at the time of certifying, Dhiren Babu was not in service. He was not in a position to remember, if Dhiren Babu gave the certificate after hearing him or after consulting any records, but he said, Dhiren Babu wrote the certificate in his presence and gave the certificate in 1990. He has stated to have taken such certificate after such a long time, as he was informed by the Union that he will have to depose, but such fact, has not been stated to Dhiren Babu. The certificate of Dhiren Babu, he has said, was on a plain paper and not under the seal of the said Corporation. He was aware that records of employees of the said Corporation will not be lying with Dhiren Babu, but they will be with the said Corporation and he has not asked for the certificate from them. He was specific that for a certificate of employment he will approach Dhiren Babu, but if any money was due to him from the said Corporation, for his earlier employment, he will approach them. Although he has said that when Dhiren Babu was Depot Incharge, there were other officers, but he was not in a position to say whether there was any Assistant Depot Incharge, although he has said that there was a Godown Keeper, whose name, he was not remembering. According to him, Dhiren Babu had the authority to grant such certificate, as in his case, although he has said that Deo Prosad knew him to be working for the said Corporation, but he has not approached him, as he was his own man. It was his evidence that since he was staying at Siliguri for a long time, the Anchal Proddhan knew that he was working with the said Corporation but he has said that he has not taken such certificate of employment from the Anchal Proddhan, as he thought that the said certificate will not be of any use. It was his evidence that Dhiren Babu explained the contents of his certificate to him, but he was not in a position to remember them and the photograph as affixed in his certificate, was snapped in 1990 and he gave the same to Dhiren Babu, of his own. This intelligent action, from an illiterate employee like the witness, could hardly be believed and relied on. It was his evidence, since he was not in possession of the Identity



Card like some other employees. he got the photograph affixed with Dhiren Babu's certificate. He has of course agreed that he has not mentioned in his affidavit, reasons why, he got the photograph affixed in the certificate of Dhiren Babu. He could not establish by any evidence, his stay at Siliguri in 1972 to 1990 or establish his stay at Bhaktinagore and although deposed to have staying in a shanty, such fact, he has not mentioned in his affidavit. He could not produce any evidence of his workings with F.C.I. in 1992, when there were contractors and employees were working under contractors. He has said to have worked under a contractor in 1972, but such fact, he has not mentioned in his affidavit. He has agreed, not to have disclosed with the affidavit, any document showing that from 1973 to 1975, he worked under Direct Payment System and he has stated that after hearing from Deo Prosad and other Babus, he could gather that the papers on which he used to sign for receiving payments, were payment sheets, but such fact has not been mentioned in the affidavit. He could of course mention the 7th month of a year to be "July" and the 3rd month as "March" and he agreed that for his termination, he has not lodged any complaint with the said Corporation. To a question from the Tribunal, the witness said that he had 7 Ration cards, out of which 2 were lost and in Ext. W-7/32, there was mention of 4 other cards, since those cards became very old. He could not say, if Ext. W-7/31 contains any signature of the Ration Shop Owner. The evidence of this witness, on consideration, appeared not only to be inconsistent with the statements in his affidavit, but were also appeared to be false. The present appearance of this witness, of course had some resemblance with the photographs as produced, but that in my view, will neither help him to establish his employment with the said Corporation nor his identity of stay at Siliguri, which again in my view, is of immaterial consideration, in the facts and circumstances of this case.

257. The workman WW-233 has not produced his identity card he has initially produced a Ration card, which is absolutely illegible, but thereafter, he has produced a hand written copy of the said card, claiming the same to be a true copy and certified by his learned Advocate. His evidence was that he received a Permit slip from Paul Babu, which was signed by Paul Babu in his presence and he also affixed his LTI thereon in the presence of Paul Babu, but like many others, he had said to have lost that slip, but for that loss, he has admitted, not to have filed any information to the Police Station. Although he has said that he has filed an information to the local police station for the loss of his Identity Card. Is it not strange that for the loss of the Identity card, he could file such information, but for the loss of the permit slip, he has not done so? From the information as filed, it appeared that the number of his Identity card was 51. It was his further evidence that the identity card in question, was received by him in 1978. Even on a reference to the purported true copy of the Ration card as filed, it will not appear, when he drew ration, although in the illegible copy as filed, such drawing appearing to have been made on March 18, 1992. He further said that in 1971, he worked under a contractor, but neither such fact nor any statement regarding payment sheet has been made by him in his affidavit. His evidence regarding his age and the date of death of his father was absolutely unreliable. He has produced a certificate from the Commissioner, Sri Bejoy Dey, without any photograph affixed therein and has also produced another certificate from Narendra Nath Sarkar, with a photograph affixed therein. This photograph, he has said to have affixed for his identity, but there appeared to be no resemblance with the photograph as affixed, with the present appearance of the witness. It appeared that when the certificate of Narendra Babu was given, he was neither in service nor the said certificate was issued in any form or under the seal of the said Corporation. The evidence of this witness, on the whole, appeared to be inconsistent and false. He could name his drafting lawyer, but was not in a position to say, who took him to the said lawyer. He claimed that the relevant records were lying with the said Corporation. He has said to have taken the certificate from Naren Babu, as he was informed that he will have to depose in this case and as such also, he got the concerned photograph affixed to the certificate, which he claimed to have been snapped 4 months ago. Naren Babu's certificate was obtained on July 27, 1992. He was not aware of the contents of the Union Receipts as produced. One of them, of course, was of the relevant time.

258. The workman WW-234 has produced his Identity Card bearing No. W-1/93, which appeared to have been issued on

April 14, 1978 and his evidence was that the same was received from Dutta Babu. It was his evidence that he was not aware, whether he has said anything regarding Payment Sheet, in his affidavit. He has further stated that he was re-employed in 1978 and he was informed, that he was one of the employees involved out of 464 workmen, whose case is pending. While on the question of Permit slip, he has said that he received the same from Paul Babu, who signed in his presence and he has also affixed his LTI in the presence of Paul Babu. Like many others, he has said to have lost the said slip and has asked for a copy of the same, which was lying with the said Corporation, but they have refused to supply such copy. He remembered nothing in respect of the entries in the Permit slip or when he received the same and as stated herein, he has not claimed a copy of such slip from the said Corporation. His evidence regarding age, was not believable and he said that he was not aware, what was his age in 1978. He has produced 4 Union receipts, one of which was of the relevant period and that, got the registration number of the Union, as 8218 while other receipts showed, the registration of the Union to be 8219. He has produced a certificate from the Commissioner, Bejoy Babu, who was the Commissioner for Ward No. 29, but the witness was a resident of Ward No. 24. From the Ration card as produced, it appeared that R. Mahato was shown as the Head of his family. But he agreed that the said Sri Mahato was not a member of the family and he claimed that the said Sri Mahato was claimed to be the Head of the family. He had no document to establish his stay at the place as stated in the evidence and he claimed, on being asked, that his appearance on the date of evidence, was the same as that of his appearance, when he worked under the said Corporation. The photograph as produced had no resemblance with his present appearance. It further appeared to me that his evidence was not only false, but the same was inconsistent and not believable too. On being asked, he said, it would not be possible for him to recognise the signature of Paul Babu, because he was illiterate. The photograph of this witness as appeared from the Identity card, was also not tallying with his present appearance.

259. The workman WW-235, has not produced his Identity card, but has produced a certificate from Narendra Nath Sarkar, in the same form and manner like other certificates as obtained from said Sri Sarkar, by other employees. The certificate of Bijoy Babu, the Commissioner of Ward No. 29 was in the same form, terms and language as that of his other certificates and although the witness was a resident of Ward No. 24, he produced the certificate of Bejoy Babu, who was the Commissioner of Ward No. 29. The LTI of this witness as affixed in the two certificates as mentioned, on a plain look, appeared to be different. He has produced a xerox copy of his duplicate Ration card and said, that he is drawing ration on that card. He was not aware of the address of Bejoy Babu or has said anything in his affidavit. He has said to be one of the 464 employees as involved, on hearing from the Union and has produced two receipts of the Union, none of which was of the relevant period. He could not identify the signature on both the receipts. It was his evidence that he obtained the certificates as produced, for deposing and the photographs as affixed in the certificates were snapped 4/5 months ago. Even then, the present appearance of the witness had no resemblance with the photographs as affixed. He could not also name the month or dates when he obtained the certificates as annexed. He has not made any statement regarding the Ration card in his affidavit, but he has said that he was 44 years of age, when he received the card in 1990. Regarding the Permit slip, he has said the same to be containing his LTI and signature like others and nothing else. It was his evidence that the records regarding Payment sheet, were lying with the said Corporation, but, admittedly, he has not asked for a copy of the same from the said Corporation. It was his evidence that he was staying in a shanty on Railway land and that fact was known to Bejoy Babu. But Bejoy Babu in his certificate, has not mentioned that fact. It was his further evidence that he worked under Direct Payment System in 1973 and the records are with the said Corporation. Most of his statements were on the basis of hearing from Deo Prosad, but he was not in a position to identify any of the signatures on the documents as produced. The deposition of this witness, appeared to be inconsistent with the statements as made in the affidavit.

360. WW-236 has produced his Identity card, bearing No. W-1/181 and the photograph as affixed therein, differed with

his present appearance. The Identity card was received by him on May 5, 1978 and he claimed that even though 14 years have passed, yet his appearance today has remained the same. This witness was heard of hearing and like others, he has said that Paul Babu signed the Permit slip in his presence and he affixed his LTI in his presence, but has lost the same. In his evidence, he has said to have suffered such loss in 1977 or 1990, but nothing has been said in his affidavit on that account and he was also not in a position to say, whether he has said anything about the fact that he was one of the employees of 464 workmen concerned. He was not aware as to when he lost his father, but in his affidavit, he described his father as late, but in Bejoy Babu's certificate, which was obtained on February 12, 1990, his father has not been shown as 'Late', although it was his specific evidence that he obtained the certificate after the death of his father. This witness was resident of Ward No. 20 of the Municipality, in which Ashoke Bhattacharjee was the Commissioner and Bejoy Babu was the Commissioner of Ward No. 29. It was his evidence that his stay on Railway land was known to Bejoy Babu, but, unfortunately, nothing appeared to have said on that account in the certificate of Bejoy Babu. There has been no statement in his affidavit regarding his employment in 1978 and in fact, he tried to by-pass such fact, by saying 'I do not remember'. He has of course said that such fact was intimated to his drafting lawyer. He has mentioned without any evidence, that he was employed under a contractor by the name of S. C. Kundu. He could not say, what was his age either in 1970 or in 1989. His evidence was that he was staying at Jyotinagar, but such fact do not appear to have been stated by Bejoy Babu in his certificate and the same has not also tallied with his identity card. His evidence, not only appeared to be inconsistent, but the statements made in the affidavit and the same appeared to be false.

261. The workman WW-237 has not produced his Identity card, but has produced a certificate from Narendra Nath Sarkar, in the same form and manner in the other certificates from Mr. Sarkar, as produced. He has signed the certificate which signature was attested by Narendra Babu, in Hindi, such Hindi signature also appeared in his affidavit, but on being asked, he signed in Court in English. That signature has been kept attached to his affidavit. It was necessary because he said that he can sign in English and also in Hindi. He has said to have filed an information with the Police for the Identity card, which was said to have been lost and there he has signed in English. But admittedly, he has not filed any such information for the loss of the Permit slip, which was said to have been received from Paul Babu and Paul Babu signed the same in his presence and he also affixed his signature in the presence of Paul Babu. He has disclosed 5 Union receipts, none of which was of the relevant period. He has said that there was his photograph in the Identity card, which was signed by Dutta Babu and Deo Prasad. His evidence was that he was working under a contractor in 1970, but either such fact or his employment for 4 months in 1978, has been mentioned in his affidavit. His evidence regarding age and stay at Siliguri were very difficult to be believed and relied upon. It was his evidence that he knew about the case and the certificate of Narendra Babu was on a plain paper and without the seal of the said Corporation. His evidence was that, he got the photograph as affixed, in Narendra Babu's certificate, snapped in 1990 and if, presently he requires a certificate for employment, to establish his previous employment, he will approach Narendra Babu. It was his evidence that Narendra Babu gave him the certificate after consulting records, which fact appeared to be untrue, as Narendra Babu was not admittedly in service of the said Corporation, when he gave the certificate. He has said to have received the Ration card in 1990 and his evidence was that Bejoy Babu knew the name of his father. But it would appear that the said Beroy Babu has not said, actually where the employee concerned was staying, although he himself has said he was staying in a shanty on Railway land. It was his evidence that he knew about the inclusion of his name within 464 employees from Deo Prasad, but such fact has not been mentioned in his affidavit. The present appearance of this witness, compared with the photograph as produced, appeared to have little resemblance and on that basis, it is very difficult to hold the identity of his present appearance

with that of his appearance at the time he was employed in FCI, tallying. On the whole, it appeared that the evidence as given, was untrue and not trustworthy.

262. So far WW-238 is concerned, he has said to have received the Identity card, but has lost the same and for establishing his employment under the said Corporation, he has produced a certificate from Narendra Nath Sarkar on a plain paper and not in any form of the said Corporation or with the seal. With this certificate, he has also annexed a photograph. It was his evidence that although Dhiren Babu, who in fact has given certificate to many, was still at Siliguri, yet he took the certificate from Narendra Babu, as he met him first. It was his evidence that in two places in Narendra Babu's certificate, he has signed, since there was some defect in his first signature. But looking at the certificate of Narendra Babu, it did not appear that he signed in two places. He agreed that at the time of certifying, Narendra Babu was not in service and the certificate was given by him on hearing him and not after consultation of records. The photograph as affixed have stated to have been snapped in 1982 and the same was given to Naren Babu, of his own and not on his asking. He has said that Naren Babu knew him to be working in 1978, but he was not aware, whether Naren Babu at that time was in service or not. Apart from the certificate, he had no other evidence to prove his workings in the said Corporation and he was not aware, if Naren Babu had the authority to give such certificate. He has produced another certificate from Shanti Chakraborty, Commissioner of the Municipality. There is evidence of interpolation or overwriting of the word 'Late' in the certificate. He has deposed that if he requires the certificate, he will approach the present officer, whoever he is and papers of employees, employed with the said Corporation, will be lying with them and if any such employee requires a certificate, he should approach the said Corporation and if such a certificate is required, the officers of the said Corporation will give the same. But, he has said that he has not applied for the certificate from the said Corporation and got the certificate from Naren Babu, since he was there, when the employee was working. But he was candid enough to say that if any money is due to him from the said Corporation, he will approach the said Corporation and not Naren Babu. The certificate of Naren Babu was stated to have been obtained for his identification. He has in another breath stated that the certificate as issued to him by the officer, contains the seal of the said Corporation, which fact is untrue. Although he has obtained the certificate from Naren Babu, in many places he has mentioned the name of Dhiren Babu. It was his specific evidence that he told Dhiren Babu that since he has lost his Permit card, he should be given a certificate for his entry into the godown, but there is no evidence to support such statement. For the loss of the Permit card, he has not lodged any information with the Police. He got the certificate from Dhiren Babu but he did not show Dhiren Babu any document showing that he received a Permit card. He was not certain, from which date and upto what date, he worked in 1978 with the said Corporation. Again, he has said that the Identity card in question was given to him in the presence of Dhiren Babu and at that time, Jibananda Banerjee was in service, but instead of approaching the said Sri Banerjee, he has approached Dhiren Babu and at the time of obtaining the certificate, Dhiren Babu was Depot Incharge. It was his evidence that his father was staying with him. He had no document, either to show his employment for 1972 or to show his workings in Direct Payment System from 1973. He said the document to be payment sheets, as Babu's used to call them as such. He has not asked for the copy of the document from the said Corporation although according to him, they were lying with them. He had no evidence to show about his termination. In 1975 or for establishing his workings for few days in 1978. He was not aware, what was his Permit Slip number, but his evidence is that he received the same on March 18, 1975, but such fact, has not been mentioned in the affidavit. He could not produce any evidence, showing receipt of the Permit Slip on March 18, 1975, and in the affidavit, he has admitted not to have mentioned about the writings in the permit slip or when

he has lost the same. Such loss was not also intimated to the said Corporation, or a copy of the same has been asked for from them, in writing. He has stated that he has not mentioned his Identity Card number in the affidavit, but such number was 19 and he had no evidence to establish such fact and he has forgotten to do so. His evidence regarding the statements of pending case, was based on hearing. It would appear that he has specifically stated in his affidavit that he has annexed a certificate from Dhiren Babu. He has produced one Union receipt, for establishing his membership with the said Union and apart from that receipt, he has lost all receipts, for which he has no evidence. According to him, there is no evidence to show that in 1986, either he or any member of his family had Ration card. He was specific that he had no document to show that on deposit of 1986 card, he has got the present one. He said, Ration cards do not contain the signature of the Ration Shop owner, but they contain the dates and Ration cards were reissued in 1990, when he was 40 years of age. He was not aware of the contents of the Commissioner's certificate, but said, that he could, to some extent speak about the contents. The Commissioner's certificate was also with a photograph, which was snapped in 1990 and he has said that he gave the photograph to the Commissioner of his own and not on his asking. In fact, he has said the certificate was obtained for his proof. The evidence of this witness, was not absolutely trustworthy. The same witness in Court, appeared to be significant. Although the present appearance of this witness had clear resemblance with the photograph as produced, yet, the way he has deposed and for the views as recorded herein, it is a very difficult to rely on his statement or to believe the veracity thereof and the photograph as produced, after such a long time, will not certainly establish that the identity of the witness was the same as on the date, when he deposed, after such a long lapse of time.

263. WW-239 has not produced his Identity card, but, he has produced a certificate from the same Narendra Nath Sarkar, for the purpose of establishing his employment with the said Corporation, affixing a photograph. The certificate of Narendra Nath Sarkar shows that instead of describing the name of the father of the witness as "Late Bhanu Paswan", it has been written as "Tale Bhana Paswan". He has produced a certificate from Shri Shanti Chakraborty, Commissioner, Siliguri Municipality, along with a photograph affixed thereon, which to my mind, may at least will establish his stay at Siliguri, but not his employment with the said Corporation. It was his evidence that he obtained the Commissioner's certificate, for his proof, which has been said in the affidavit, but he was not aware what else he has stated. He could not remember, what were the writings in that certificate and although he received the certificate on August 8, 1992, he said that he got his photograph snapped 4 months ago and gave the same to the Commissioner of his own and not on his asking. It was his further evidence that since an extra copy of the photograph was lying with him, he gave the same to the Commissioner. He was not aware about the contents of the certificate of Narendra Babu, but he said that the certificate was on a plain paper and not in any form of the said Corporation or with their seal. He has agreed that Narendra Babu gave him the certificate at point of time, when he was not in service and he took the certificate at such a late stage in 1992, as he felt that the same would be necessary for his identification. But, was not aware, if after retirement, Naren Babu had the authority to grant the certificate and he gave the certificate without consulting any paper. He was specific that if he requires a certificate now, for any employment, he will approach the said Corporation. But, he has not asked for such certificate from them. He was also aware that papers in respect of those, who worked in the said Corporation or who are working, would be lying with them. This photograph in Naren Babu's certificate, was also snapped 4 months ago, and the certificate was dated July 23, 1992 and he gave the photograph to Naren Babu on his own and not on his asking and that too, for his identity and this fact according to him, has been stated in the affidavit.

According to the witness, in 1971, there was contractors in the said Corporation and he worked under one of them, which fact again, has not been mentioned in the affidavit. He has agreed, not to possess any document about his workings under the contractors or under the said Corporation or any document showing his workings in Direct Payment System in 1973. He could realise the document as payment sheet, on hearing the same from Babus. But he has not mentioned that in his affidavit. Although he said that he was terminated on July 21, 1975, he could not name the 7th month. His evidence was that he was not remembering what he has said in respect of pending proceedings in this Tribunal, but he has said that he is one of the employees involved in 464, for whom Supreme Court has given directions, but such statement was made by him, on hearing. He was not aware about the statements he made in the affidavit regarding his Ration Card and as such, was not in a position to indicate what instructions he gave to his drafting lawyer in that regard. There is no LTI of his in the Ration card and he said that he was 41 years old, when he received the Ration card. He was not aware, when he received the said Card. On a comparison with the present appearance of the witness along with the photograph as produced, there appeared to be no resemblance and in any event, the photographs which are of recent origin, in my view, will not establish his appearance in 1975 i.e. at the time of his termination. It was his evidence that he received the Permit slip, but since he is illiterate, he cannot say what was his permit slip number. He was not in a position, because of his illiteracy, to say, what was the Permit slip number or what were the writings in that slip. He was not aware, when he lost the said slip and for such loss, he has not lodged any Diary or informed the said Corporation. His evidence regarding age was very much discrepant and although he has admitted to be staying on Railway land, for which he neither had any document nor any permission from the Railways and such stay of his on Railway land, has not been mentioned by the certifying Commissioner. He was not in a position to identify the signature of Paul Babu. His evidence as tendered, appeared to be inconsistent with the statements as contained in the affidavit.

264. The workman WW-240 has not produced his Identity card, but has produced a certificate, to establish employment with the said Corporation from Narendra Nath Sarkar. This certificate was admittedly, not in a form of the said Corporation or with their seal. He has also produced another certificate, containing a photograph from R. K. Agarwal, his Ward Commissioner. The photographs in these two certificates, appeared to be different, but the witness appeared to have clear resemblance with the photographs as affixed in the certificate of the Commissioner. He has said that after the certificate, the Commissioner did not explain the contents of the same to him, but in the same breath he has said that the Commissioner read out the certificate to him. Although he was known to the Commissioner, yet, he gave the photograph to him of his own, for identification, as he had a copy. This photograph was snapped 3 to 4 months ago from the date of his deposition. The certificate was dated August 17, 1992. He has said that the two photographs were snapped together and one of them was affixed to the certificate of Naren Babu, but strangely enough, these two photographs as stated earlier, differed in many respect. The simultaneous snapping of the photograph was neither proved nor believable in the facts of the case. He was not aware, since he was illiterate, as to what were the contents of Sarkar Babu's certificate. But, he said that Sarkar Babu was not in service of the said Corporation, when he issued the certificate and he gave the certificate after hearing him and not on consultation of any record. He was not aware, if Sarkar Babu had the authority to give such certificate as he had retired. He was not aware as to whether the certificate for employees of the said Corporation, should be issued by the officers, but he was aware, if any money was due to him from the said Corporation, he should approach them and not Sarkar Babu, but if he requires new a certificate for his employment, he should approach Sarkar Babu, although papers of the employees of the said Corporation will not be available with him. He got the certificate from Sarkar Babu, for the purpose of deposing and he was not in a position to identify the signature of Sarkar Babu and was not aware, what statements he had made in respect of the certificate of Sarkar Babu. He was very candid in saying that save and except that he

has grown old, his appearance remained the same as in 1975. This fact, can hardly be believed or is possible. He was not aware of the date of birth or establish his age 44 as declared. Although his evidence was that he was staying in the Jhupri on Railway land, without necessary permission, he has not mentioned about such stay in his affidavit and the Commissioner's certificate is also silent on that point. His evidence regarding pending proceedings or the order of the Supreme Court, was on the basis of hearing and he was not sure as to what he has stated in respect of such proceeding. In his affidavit, his evidence was that he was employed in 1970 to 1975. He was also under Direct Payment System and on 21-7-1975, he was terminated. It was his evidence, in 1970, there were contractors in the said Corporation and he was working under the contractor. But, he has not said that fact in his affidavit. He could not produce any evidence, establishing his workings under a contractor or that he was employed under Direct Payment System in 1973. He has not mentioned his Permit slip number in the affidavit and was not in a position to say what was the writings therein. He had no document to show about his loss of the Permit slip and there was nothing to show that in 1975, he got a Permit slip. He agreed that he had no document to show that in 1986, he had a Ration card or on deposit of such card, he has got the present one. There is admittedly no LTI of his in the Ration card. But he has said that he was 39 years old, when he got the card. He agreed that the certificate of Sarkar Babu was obtained at a very distant date and his LTI in Sarkar Babu's certificate, has not been stated to have been attested by Sarkar Babu and he has only mentioned that he has attested the photograph. The evidence of this witness was not consistent with the statements in his affidavit and even though there appeared to be clear resemblance of his present appearance with one of the photographs as produced, yet, for the reasons as stated earlier, it is very difficult to hold that he has been able to establish his workings with the said Corporation, at the relevant time.

265. WW-241 has produced his Identity card bearing No. W-1/216, which was dated May 13, 1978. He has further deposed to be presently employed in the Postal Department. He has neither produced his Ration card nor any certificate from any of the officers of the said Corporation. Like other employees and so also the Commissioner's certificate, it was his evidence that he received a Permit slip in 1973, but has lost the same. Such fact of losing the Permit slips have been deposed, as will appear from the evidence of the employees as recorded uptill now, was a common ground. In the Postal Department, he is now employed as Sorter.

To prove his age, he has produced his admit card (Ext. W-7/33), but the photograph in the Identity card differed with his present appearance. He was candid enough to say that he does not remember the Permit slip number. But neither such statement nor the receipt of the Permit slip in 1973, has been made in the affidavit. The photograph as available in his Identity card was claimed to have been blurred by water, but strangely enough, the writings in the Identity card were not at all or so blurred. His statements regarding the information about the pending proceedings and those of the Supreme Court case, were on the basis of learning from Deo Prosad. But such fact, he has not mentioned in his affidavit. He has stated that he has not been asked by the employees to come and depose, but has stated to have come on his own. The present appearance of this witness had no resemblance with the photograph even though blurred and as available. On the basis of the evidence as tendered, it is very difficult to hold that he has been able to establish his identity of employment with the said Corporation at the relevant time and on being asked, he stated that he has come to depose after obtaining the casual leave from his present employer. It is needless to point out that he did not try to have identity established on production of such or any evidence as tendered by the other employees. He has said indicated that his Identity card was not handed over to the said Union. He has said to be signing both as Narendra Nath Roy and Haren Roy, which is possible. He has not claimed to have passed School Final Examination.

266 WW-242 has not produced his Identity card and to support his story of employment with the said Corporation, he has produced a certificate from Narendra Nath Sarkar, like

many other employees. The writings in the certificate, had marked difference. He has made similar statements in respect of Permit slip like others viz. he received the same from Paul Babu, who signed in his presence and he affixed his LTI in the presence of Paul Babu, but were not in a position to say about the date of the Permit slip or to identify the signature of Paul Babu. His evidence in respect of his age and date of birth, was far from being satisfactory and although he has said to be staying at Siliguri from 1972 to 1989, there has in fact been, no document produced to that effect. He has said to have received payments on signing the Payment Sheets and has also stated about the strike in 1973. His statement in respect of the case here or regarding the proceedings in the Supreme Court, were said to be on hearing from Deo Prosad. But, such fact, he has not mentioned in his affidavit. He was not aware, when he received the Ration card, whether there was any signature of the owner on either side and his father has been indicated to be the Head of the Family. In the case, of course, it could appear that the duplicate copy of the card as produced, was on the basis of payment of .50 paise and the card in question, was in a very tottered condition and contained evidence of posting and so also overwriting. It was his evidence that the photograph as produced, was snapped 5 or 6 months ago. As indicated earlier, his evidence regarding his age, was not at all trustworthy and he further stated that Naren Babu wrote and signed the certificate in his presence, but on being shown, he could not say, who wrote the name of Naren Babu. But he agreed that the said certificate was on a plain paper, without any seal of the said Corporation and was given after hearing him. He agreed that papers in respect of the employees of the said Corporation, will be lying with them and if necessary the employees can demand necessary certificate from the said Corporation. It was his evidence that although others received Identity cards, he had not. The evidence of this witness, was on the whole inconsistent with the statements as contained in the affidavit and I find that the evidence as produced by him, would not be enough to establish his identity of employment with the said Corporation at the relevant time. The present appearance of the witness have no resemblance with the photographs as produced. In any event, the photograph as produced, cannot establish his appearance of 1975.

267. WW-243 has not produced his Identity card. He has produced two photographs, one affixed to the certificate of the Commissioner, Bejoy Babu and the other was affixed to the certificate of Sri D. Banerjee. Even those two photographs differed. He has said like others, to have received the Permit slip from Paul Babu, which again, he has lost like many of the other employees, but he has given the permit slip number to be 461. He could not of course, identify the signature of Paul Babu and for the loss of the Permit slip, he has not lodged any information to the Police Station. He was not in a position to say what were the contents of Banerjee Babu's certificate, but he said that he was not in service, when he gave the certificate. He has said to have received the duplicate copy of the Ration card, after losing the initial one, 5 months ago. His duplicate copy of the Ration card showed an entry of .50 paise, but he has not filed any General Diary for the loss of the Ration card. He produced his Union receipts, but was not in a position to say, who signed them. It was his evidence that from 1972 to 1989, he was staying on Railway land, which according to him, Banerjee Babu knew. He has said to have received pay on signing Payment sheets and he was specific that even though he was appointed earlier than 1975, he never worked under Banerjee Babu or could say, when he signed the certificate, although his evidence was that Banerjee Babu wrote the certificate in his presence, on a plain paper and which was not in the form of the said Corporation or with their Seal. It was his evidence that the photograph as affixed, was snapped 3 or 4 days before the certificate and the certificate was obtained for his identity. He has said, his age was 44, when he received the Ration Card. But, he was not definite about his age in 1987 or 1992. In fact, he said that in 1987, he was 40 years of age and in 1992, his age was 44. He could not of course say what was his age in 1975 and what was the date of his birth. His evidence regarding the pending proceedings in the Supreme Court was on the basis of hearing and he stated that his appearance on the date of deposition, remained the same as during his

employment, which is very difficult to believe and accept. But, he has said that he has only grown old. The present appearance of the witness, had no resemblance, with the photograph as produced and even if, there was resemblance, it is very difficult to establish his identity or employment in the said Corporation in 1975, on the basis of evidence as produced. His demeanour in Court was not very convincing and that apart, his evidence was not only inconsistent with the affidavit, but the same was false to a great extent.

268. WW-244 has not produced his Identity card, but has produced two photographs with the two certificates, particulars whereof, will be indicated hereinafter. He has produced the Union receipts for the purpose of showing his membership of the said Union, one bearing No. 8218 and the other number being 8219. He could not identify the signatures of the signatories of those receipts. He has said about the Permit slip, but not the writings of the same, in the affidavit. He could not also mention his permit slip number or the date thereof and when he lost the same like others, which he has said to have informed to his drafting lawyer. It was his evidence that he got the present ration card on deposit of the old one, but there was no evidence of such deposit. He has not also said, when he received the Ration card, although the date of the same appeared to be August 16, 1990. His evidence regarding age, was absolutely inconsistent. He could not say what was his age in 1985, but said in 1975, he was 23 or 24 years of age. To establish his identity of employment, he has produced a certificate from Sarkar Babu, like many others, as he worked under him. But he agreed, that the said certificate was not either in the form of the said Corporation or with their seal and the same was on a plain paper. He has said that at the time of issuing the certificate, Sarkar Babu was not in service. He has admitted to have obtained the certificate from Sarkar Babu, on being informed by the Union that the same would be necessary for this case. The photograph, as he has affixed with the certificate of Sarkar Babu, was snapped one month ago, but the same showed no resemblance with that of the present appearance of the witness. Although he was employed prior to 1972, he has said, he had worked under a contractor for 2 days. He has said, others got their Identity cards, but he did not and this fact was said to his drafting lawyer, but whether such fact was said to any one else, he could not remember. He could identify the signature of Paul Babu. I have already indicated about the resemblance of this witness or how far that could be relied upon, but one thing is certain that his statement in Court, was very much inconsistent with his statement in the affidavit.

269. WW-245 has produced his Identity card, bearing No. W-1203 and he said that the said card was signed by Dutta Babu. He was not in a position to remember fully, the facts, as stated in his affidavit, although the same was affixed few days ago. The date of the Identity card was April 14, 1978 and the affidavit according to him, was explained to him by Niranjan Babu. It is strange, yet he could not remember the contents of the affidavit. He has said that he has produced those Union receipts, which he as received. But, was not in a position to identify the signature of the signatories of those receipts. His evidence in respect of the Permit slip was the same like others and like them, he has also said to have lost that slip, but such fact, has not been mentioned in his affidavit. He has said, not to remember, what were the contents of the said Permit slip and was not aware of the full name of Paul Saheb and he could not identify the signature of Paul Saheb. He has not reported the loss of the permit slip either to the said Corporation or to any one. He does not even remember about the particulars of his employment in 1978, although he has made such statement, not only to his lawyer, but also said that he was employed for 4 months. He was not in a position to say about the date of his termination of employment in 1978 or when he was employed or what statements he made on that account. He has said that in 1972, he had worked under a contractor. But, he could not mention the name and particulars of that contractor. His evidence regarding age, could hardly be believed and he could not even say, when he lost his father. He has not produced his Ration card and there is no statement about

the same in his affidavit. Although he has said that he was staying on a Government land yet, such fact has neither been mentioned in the affidavit nor in the certificates. He has not mentioned the Permit card number in the affidavit or has made any reliable statement in respect of his Identity card, here. The present appearance of the witness has little resemblance with the photographs as produced, but even if there was resemblance, that could not, in my view, establish that he was employed in the said Corporation at the relevant time. From the demeanour of the witness, it appeared that he, not only deposed falsely, but he was a tutored witness.

270. WW-246 has not produced his Identity Card. He has produced Union receipts, bearing different registration numbers viz. 8218 and 8219 and has said that he was not only aware of the contents of them, but he was not also aware of the signatures of the signatories therein. He has said that he received the Ration Card as produced in 1990, in exchange of his 1986 Ration Card and there is no LTI affixed therein. He has produced a Commissioner's certificate which was received by him 7 or 8 days ago from the date he deposed. The name of the Commissioner again was Bejoy Babu. He was not of course aware of the date of the certificate and when, in this certificate, he has got affixed his photograph, to establish his identity. But, he has said that the certificate was not prepared or obtained for the purpose of this case. To establish his employment with the said Corporation, he has produced a certificate from Banerjee Babu, which was obtained one month ago. But he was not aware of the contents of the same and he said that Banerjee Babu knew the name of his father. With this certificate, he has again got a photograph fixed, but he said that he does not remember what were the contents of the same and he had no evidence to show that he worked under Banerjee Babu, except that certificate. He was frank enough to say that such certificate was given by Banerjee Babu on hearing him, but not on consultation of any records. He has said that the certificate was on a plain paper, without any Seal of the said Corporation and he could identify 2 out of 3 signatures of Banerjee Babu and said that at the time of certifying, Banerjee Babu was not in service, but he had acted under Banerjee Babu. It was his evidence that the documents regarding his employment are with the said Corporation, but he has not asked for such record from them. He has obtained the certificate with the photograph now, since he required the same. It was his evidence that he was employed in 1972 and was terminated on 21-7-1975. But he could not remember or mention the name of the 7th month. Like others, he has said to have received the Permit slip, which again he has lost, from Paul Babu and a copy of the slip was lying with the said Corporation. He has also said that he has affixed his LTI on the Permit slip. But, he does not remember the date of the Permit slip or the contents thereof. He has not asked for a copy of the Permit slip, as lying with the said Corporation or has stated or has informed them, about the loss of the same. His statements regarding the Supreme Court case were on hearing from Deo Prosad. But that fact he has not mentioned in the affidavit and that was also in respect of the present proceedings. He has also learnt that fact from Deo Prosad, but that fact again, has not been mentioned in the affidavit. Although he has said to have worked under Direct Payment System in 1973, he has not produced any cogent evidence for that. Although he said many things on the basis of hearing and learning from the said Union, but those facts have not been mentioned in his affidavit. His evidence appeared to be inconsistent with the statements as made in the affidavit and he could not identify the signature of Paul Babu. There was of course little resemblance of his present appearance with the photographs, but that would not in my view, establish that he was employed with the said Corporation at the relevant time or that his present appearance remained the same in 1975 or 1978. The Commissioner's certificate is silent regarding the place where the witness has said to have resided from 1972 to 1989.

271. WW-247 has not produced his Identity card. His evidence regarding age was not at all definite and believable. He has not produced any document, for establishing his stay at Silliguri. He has stated that in his affidavit, he has mentioned that he was terminated without any notice. He could not mention the date of his Permit slip or the number of the same and his evidence, regarding such slip, was



similar like others. He was not aware as to when he received the Ration card. He has produced a certificate from Narendra Nath Sarkar, but was not aware of the contents of the same. He was also not aware of the contents of the certificate of Bejoy Babu, but said, Bejoy Babu knew him and he also know Bejoy Babu and it was his evidence that he got the said certificate for the purpose of this case. The certificate of Narendra Nath Sarkar, like others, was on a plain paper, without any seal of the said Corporation and obtained at a point of time, when the said Sri Sarkar had retired. He has further said that Naren Babu gave the certificate to him, after hearing and not after consulting the records. He was not aware, as to whether Naren Babu had the authority to grant such certificate, after his retirement. He has got affixed, with Naren Babu's certificate, a photograph, but he was not aware when the same was snapped. He has categorically stated that he got this certificate for the purpose of this case. This witness could not identify the signature of Paul Babu. The present appearance of this witness had also no resemblance with the photograph as produced. Even if there was resemblance between his appearance now and the photographs as produced, I feel that the same could not establish his identity after 15 years or so. His evidence appeared to be apparently false and inconsistent with his statement in the affidavit.

272. WW-248 has also not produced his Identity card. The Union receipts as produced by him, showed two registration numbers of the Union, one being 8218 and the other 8219. The photograph which he has produced with the certificate as stated hereinafter, differed. Although he has said that the Commissioner, who has certified, knew him to be staying in a jhupri on Government land, yet such particulars of his stay has not been mentioned by the Commissioner in his certificate. He has produced another certificate for establishing his employment with the said Corporation from Dhiren Banerjee, on affixing a photo, which according to him, was snapped one and half years age. He has further stated that apart from the photograph in the certificate, he has affixed his LTI and Dhiren Babu knew his father's name. He has stated that Dhiren Babu has retired at the time of issuing the certificate and the certificate was on a plain paper and he was not aware, if on such certificate, the seal of the said Corporation has to be used. This witness has stated that in 1978, he received an Identity Card, but has lost the same and in that card, there was signature of Dutta Babu and Deo Prosad. For such loss of the Identity card, he has not, admittedly filed any information either to the Police or with the said Corporation. At one stage, he of course wanted to say that he does remember such facts and he has further mentioned that in his affidavit. He has indicated that Dutta Babu and Deo Prosad had signed the Identity card but in fact such statements were not appropriate. According to him, he received a Permit slip from Paul Babu and he has made similar statements regarding signing the same or attesting of LTI therein, but like others, he has lost that card and he has not mentioned such fact earlier or anywhere. He could not definitely say what was his age in 1975, 1989 or in 1978. He has stated that from 1979 to 1982, he stayed on a Government land as mentioned therein, but for that, he had no evidence. The photograph as produced, showed little resemblance of the present appearance of the witness. In my opinion, even if any resemblance with his present appearance appeared from the photograph, that would not establish what was his appearance 15 years age or so. He has not been able to identify the signature of Paul Babu, although he has said, he signed the Permit slip in his presence. His evidence appeared to be inconsistent with the statements as made in the affidavit, in many places.

273. WW-249 has not produced his Identity Card, but, to establish his employment with the said Corporation, has produced a certificate from Narendra Nath Sarkar, who admittedly had retired on the date of certifying or issuing this certificate. He has affixed a photograph which was snapped 4 or 5 months earlier. He has stated that such certificate was on a plain paper and without any seal of the said Corporation. He has further produced a certificate from Bejoy Babu Commissioner of Ward No. 29 of Siliguri Municipality. He was not aware of the residential address of Bejoy Babu or could produce any evidence showing that

Bejoy Babu knew about the death of his father. The xerox copy of the duplicate Ration Card as produced, showed a payment of 50 paise for the copy, but there is no signature in the card or his LTI therein. He was not aware of his age in 1989, but said that he was 43 years, when he took the certificate. It was his evidence that he was terminated on 21-7-1975, but was not aware, what was the name of the 7th month. Regarding Permit slip, his evidence was in the same line as that of other workmen as mentioned earlier and he was definite, that he does not remember the date of the Permit slip. In fact, he has also, like others, lost the Permit slip and has not informed the said Corporation about such loss. He could not say, what was his age in 1975. He has said that he was one of the 464 employees as terminated, but was not aware of the date when such termination took place, at the same breath he was saying, not to be remembering, if he was within 464 employees. He has produced Union receipts, but was not in a position to say, who signed them. There were discrepancies regarding the head of the family as showed in the Ration card and as mentioned by him. His photograph as produced, showed little resemblance with the present appearance, but even, that in my view, will not establish that he had the same resemblance on the date, when he was employed at least 15 years age or in 1975. His evidence, appeared not only to be false in many particulars, but was also inconsistent with the statements as contained in his affidavit.

274. WW-250 has not produced his Identity card, but he has produced two photographs with the certificates as indicated hereinafter, which also differed and he was not in a position to say, which one of the two photographs, was snapped earlier. One of such photograph is annexed with the certificate of the Municipal Commissioner and he stated, he has affixed his LTI in the said certificate, but he could not say anything more or what were the contents and the date of the certificate. He has said that he himself gave the photograph to the Commissioner and the Commissioner did not ask for the same. He could not remember, what was his age on the date when the photograph was snapped. He has produced another certificate from Dhiren Banerjee, with the photograph affixed and claimed that the LTI therein was his. But, he was not aware that what was his age, when this photograph was snapped or what were the contents and the date of the certificate. But, he said that he gave the photograph to the Commissioner of his own and not on his asking and he was not aware of the contents of the certificate. The certificate, of course, he said, was issued after hearing him, on a plain paper and not in the form of the said Corporation or with their seal. Even though he said that the certificate was written in his presence lent he was not aware of the contents of the same and was also not aware of the facts, whether Dhiren Babu had the authority to grant the certificate or the present Officer of the said Corporation should issue necessary certificates, for those who were or are employed with the said Corporation. He felt the need and necessity of this certificate and have obtained the same after hearing from Deo Prosad. His evidence in respect of the Permit slip, was no better than the evidence of the other employees. He received the Permit slip from Paul Babu, but could not identify his signature. The fact that he received the certificate, could not be established on production of any evidence and he was neither aware of the contents of the same nor the date, when he lost the same. He was sure enough that his affidavit drafted by a lawyer, after hearing him. Those statements as made in evidence were found to be inconsistent with his deposition in many respect. He could not say what was his age in 1975 or in 1972 and he could not also establish about his stay at Siliguri from 1972 to 1989 and he agreed, that he had no documents in respect of their room and land, where he was staying. It was his statement that he was employed under Direct Payment System since 1973, but apart from Payment Sheets, where his LTIs were affixed and which sheets, he has not produced, there was no other evidence. It should be noted here, the Ration Card of this witness and that of WW-249 were issued on the same date and in the same hand writing. Apart from the above, it appeared that his present appearance had no resemblance with the photographs as produced and even there was such or any resemblance available. I feel that the same would not have established his appearance, what was in 1975 or so.

275. WW-251 has no Identity card. He has produced two photographs with the certificates, the particulars whereof will be indicated hereinafter, which differed and both the photographs, according to him were snapped one year ago. It apparently appeared from his appearance and the photographs that within one year, there has been great change in his appearance. He has produced certificate from Bejoy Babu, for establishing his stay at Siliguri and certainly not in respect of his employment. He has stated that the photograph as affixed in that certificate, was snapped 1 year ago and his Ward Commissioner was Ram Kumar Agarwal. But he took the certificate from Bejoy Babu, as he could not meet the said Sri Agarwal. In many cases, we have seen that the certificates of Bejoy Babu have been obtained by employees, who are not staying in his Ward No. 29, but in otherwise and all of them have claimed that since his Ward Commissioner could not be contacted, such certificate from Bejoy Babu, was obtained. Although this witness has said the reasons, why he had obtained the certificate from Bejoy Babu instead of Ram Kumar Agarwal, but such fact, he has not mentioned in his affidavit. He has said to be knowing and Bejoy Babu also knew him and also of the fact of his stay on Railway land, but Bejoy Babu has not mentioned such fact in his certificate. He has agreed that in xerox copy of his Ration card, there is no LTI and he was terminated on 21-7-1975. His statement regarding Permit slip was on the same line and tune like other employees and he has also lost the same, like them. But, he was not aware of the date either of loss or what were the contents of the Permit slip. He could not identify the signature of Paul Babu. He has said about the certificate as obtained from Dhiren Babu, but his evidence before the Tribunal and the statements in respect of the said certificate appeared to be contradictory. Although he has got the photograph affixed to Dhiren Babu's certificate, which was snapped one year ago, but such fact has not been mentioned in his affidavit. He has said that he had a photograph in 1978, in evidence, but not in his affidavit. He was aware that on the date of certifying, Banerjee Babu had retired and his certificate was on a plain paper and without any seal of the said Corporation. He was not aware, if apart from Dhiren Babu, any other officer, as presently employed with the said Corporation, can issue the said certificate and he gave the photograph to Dhiren Babu of his own, as the Union told him that he will have to denote and in fact, he obtained this certificate for depositing. He agreed, papers of employees employed with the said Corporation, will be lying with them and not Dhiren Babu and thus, it appeared that even though he knew that his papers were lying with the said Corporation, yet he had not approached them. This witness said that in Union receipts there were signature of Hardwar Babu, which he was not in a position to identify and in fact, not only these receipts as produced by him, but also all other receipts will show that there was no signature of Hardwar Babu, but his facimile signatures are there in the receipts. His statements regarding the Supreme Court case, were on the basis of hearing from the Union members, which fact, he has not mentioned in his affidavit. He was not aware, what was his age in 1985, but he said that he was 42 years of age, when he received the Ration card. On a consideration of the evidence and his demonstration in Court, it appeared that he was deposing falsely and made statements, which were inconsistent with his affidavit. Apart from the fact that the two photographs as produced, differed and had no resemblance with the present appearance of the witness. I keep it on record, even if there was resemblance with the present appearance and the photographs, that would not have been enough to establish his appearance in 1975 or 1978, when he has claimed to have worked with the said Corporation were the same. He has said, to be staying at Khalsars in Siliguri since 1972 to 1989, but no cogent evidence has been produced in that behalf.

276. WW-252 has stated that he had an Identity card, received from Dutta Babu, but has lost the same. He has further said that the said Identity card was also signed by Deo Prasad. Since he has not produced his Identity card, he has produced two photographs along with his certificate as filed by him, but the said two photographs differed. His evidence about the contents of the Identity card or the said card were not specific and definite. He has produced a certificate from Dhiren Babu, but he could not say what were the contents of the same and so also the contents of

another certificate of Bejoy Babu, Commissioner, as produced. At one point of time, he mentioned Bejoy Babu as Banerjee Babu. It should be noted that initially, he stated the certificate of Dhiren Babu is that of Bejoy Babu. Like others, although he was illiterate, he said that he gave the photograph to Dhiren Babu of his own and without his asking and that too, for his proof and also asked Dhiren Babu to have the said photograph, affixed to his certificate. It was his evidence that the photograph as affixed, was snapped one year ago. In fact, he stated the same, in respect of the photograph in Dhiren Babu's certificate. His evidence on the point was not very consistent. It was his evidence that Dhiren Babu, as Depot Incharge, had the authority to give the necessary certificate to him. Although, he was aware that Dhiren Babu was not in service. He could not say what was his age, when the photograph was snapped and he was also not in a position to remember or to show any document, if he had worked in the said Corporation or under Dhiren Babu. He could not identify the signatures of the signatories of the two Union receipts, as produced. But, he has said to have working in the said Corporation since 1970 and was terminated on 21-7-1975. But as usual, he could not name the 7th month. Like others, he has also stated to have received the Permit slip from Paul Babu, D.M. and the said Paul Saheb has signed the Permit slip in the presence and so also he has affixed his LTI in the presence of Paul Saheb. He could identify the signature of Paul Saheb in Ext. M-7, but the strokes, rounds and lobes in the signature of Paul Saheb in Ext. M-7, did not agree with the specimen as stated to be appearing in Ext. M-6. But, even though he remembered the signature of Paul Saheb, but he could not remember the signature of Gouranga Babu, which is of recent origin and as affixed in his affidavit dated October 19, 1992. He has also not lodged any information with the Police, for the loss of the Permit slip. Apart from the statements regarding employment, nothing actually and in particular, appeared in his affidavit, to support such statements. Like many others, he was not conscious or definite about his age and he said, he could not remember his age in 1939. He further agreed, he was not in a position to remember, what was his age, when he received the Ration card. I have already indicated that the two photographs as mentioned above differed and they also differed with the resemblance of the witness. In fact, those photographs had no resemblance with the present appearance of this witness. I feel that even if there was resemblance with the photographs and the present appearance of the witness, that could not have established, what was his appearance in 1975 or 1978. His evidence, on the whole, appeared, not only to be false, but inconsistent with his affidavit.

277. WW-253 has not produced his identity card, but to establish his identity, he has produced photographs affixed with the certificates of Dhiren Babu and that of Bejoy Babu, Commissioner of the Municipality. So far Bejoy Babu's certificate, the witness could not say or remember what were the contents of the same and although he said that he has affixed his photograph and LTI therein, he could not say, why such action was taken by him. It was his evidence that the photograph was snapped 5—7 or 8 days ago and he gave the same to Bejoy Babu of his own, but could not remember, why such action was taken by him. In respect of Dhiren Babu's certificate, the witness, as usual, has said that his photograph and the LTI are there, affixed in the certificate. But it will appear that there is sign of interpolation in respect of the father's name of the witness. In fact, the word 'Late' before his father's name has been interpolated or re-written and corrected. He could not say, who wrote his name or the words "LTI" in the certificate. He was not in a position to produce any evidence, showing his workings under Dhiren Babu and agreed that his certificate was written on a plain paper, without the seal of the said Corporation and he further agreed, that the certificate was not written in his presence. He agreed that on the date of the certificate, Dhiren Babu was not in service and he in fact, had retired 2 or 3 years ago. He further agreed that prior to obtaining the certificate, there was no occasion for getting the certificate from Dhiren Babu. But, unfortunately, these facts have not been stated in the affidavit. He also did not agree that Dhiren Babu had no authority to grant the concerned certificate, but he was aware of the fact that papers of the employee, who worked in the said Corporation, should be lying with them. But, he said that still, he took the certificate from Dhiren Babu, as he had the authority to give such certificate. Although he said that he worked in the said Corporation since 1972, he had no evi-



dence to establish that. But, it was his evidence that he was terminated on 21-7-1975 and was not in a position to name the 7th month. As usual, he has said that he received the permit slip, which was lost, from Paul Saheb and Paul Saheb signed the same in his presence and he also affixed his LTI in his presence, but he said, that he has not mentioned the contents of the Permit slip in his affidavit and in fact, he had no evidence to show that Paul Saheb gave him the said slip. On being asked, the witness said that if shown, he can identify the signature of Paul Saheb and at that stage, Mr. Das, who was instructing Mr. Sinha, gave certain indications by signs to the witness, regarding the lobes and rounds in the peculiar way and the manner of the alleged signature of Paul Saheb and that being detected by me and indicated, Mr. Sinha withdrew his question. Mr. Das of course stated that he only asked Mr. Sinha, to ask the witness to look to the four corners of the document, which was placed before him and he told that his statements which have been recorded earlier, were recorded falsely and for that, he will make an application. In fact, such an application was made and I have duly passed my orders and disposed of the same, with my reasonings. On being asked by Mr. Pathak, the witness said, apart from the statements recorded earlier, he has stated many things in his affidavit regarding the Direct Payment System and Supreme Court case and in fact, it was his evidence that he was one of the employees involved in the 464 employees and order should be made, in terms of the directions of the Supreme Court. He was, like others, uncertain regarding his age. He could not say what was his age in 1974 or in 1975 or when he received the Ration card. It was his evidence that in 1972, there was contractor system in the said Corporation and worked under a contractor and was paid by the said contractor. Although he said about the Direct Payment System, he could not produce any evidence in support thereof. But said, that the concerned records are with FCI, which contained his name and LTI. But, he has not duly asked for production of them and in fact, his Union has done so. He was not even in a position to say, when did his father die and he could not remember, what was his age in 1989. Regarding his stay, he has said that from 1972 to 1989, he was staying at Siliguri. But, has not produced any evidence to establish that. He has further stated that he is staying in a shanty on Railway land, but admittedly, no such statement has been made in his affidavit and he was not sure if Bejoy Babu knew that. Bejoy Babu's certificate do not contain such description of his stay and this witness in my view, although claimed to be illiterate, was wise enough to try to cover up the necessary lacuna in Bejoy Babu's certificate during cross-examination. The witness, in my view, appeared to be absolutely tutored and that appeared, not only from the manner in which he deposed, but also from his demeanour in Court. He has some resemblance with the photographs as produced now, but that in my view and for the reasons as recorded earlier, will not establish his identity or appearance in 1975 or 1978.

278. WW-254 has produced two Union receipts, bearing two registration numbers viz. 8218 and 8219. He was not in a position to identify the signatures of the signatories in those two receipts, but said, that they were not procured for the purpose of this case. He was not aware, if he has any membership number. He has produced a Ration card, which was received in 1992. But, was not in a position to say, about the date or what was his age at the time of receipt of the card. He was also not in a position to say, if on deposit of his earlier card, he got the card in 1990. He has produced a certificate from Narendra Nath Sarkar and said that the said certificate contained his LTI and photograph, but was not in a position to say about the contents of the same. He has said to have given the photograph to Naran Babu, of his own and because in 1978, some of his co-workers got their Identity cards, but he has not. Such fact, of course, he has not said in his affidavit. He has also produced a certificate from Bejoy Babu, said to be containing his LTI and photograph. But was not in a position to say, about the contents of the same. He said that he knew Bejoy Babu and his age was 42, when the photograph as affixed in his certificate, was snapped. It was his evidence that there was a strike for one and half months in the said Corporation in 1975. It was his evidence that since 1972, he was working in the said Corporation and was terminated on 21-7-1975, but could not name the 7th month. He has not produced

any evidence about such termination. Like others, he has said to have received the Permit slip from Paul Saheb, but could not identify the signature of Paul Saheb or say about the date and contents of the same or when he received the same. He has also said to have lost the permit slip, but could not say the date of such loss and has said that all evidence was lying with the said Corporation, yet he has not asked for a copy of the slip from the said Corporation. In cross-examination, he has said that he has said about the Supreme Court case in his affidavit, after hearing from the Union. But, that fact has not been specifically mentioned in his affidavit. In paragraph 6 of his affidavit, the witness has said about the receipt of the certificate from Naran Babu, Junior Godown Keeper of F.C.I., CSD, Dabgram Depot, Siliguri, in 1992, where the photograph appears and the same is being attested by Banerjee Babu. This statement is apparently false. It was his evidence that in 1973, he was under Direct Payment System and used to receive payments through Payment Sheets, where his LTIs will appear, to show his drawings, but no cogent evidence to the above effect has been produced. His evidence was that in 1972, he was working under a contractor, but he could not say in which month in 1972, he worked as such. His statement regarding inclusion of his name within 464 employees, was based on hearing from the said Union and has said, to have stated that fact in the affidavit, which appeared to be wrong. On consideration of the evidence as a whole, the same appeared to me, to be false and inconsistent with his affidavit. The two photographs as produced had some resemblance with his present appearance, but that in my view, will not establish the same appearance of his, either in 1975 or in 1978. He has not produced his Identity card. To me, his evidence appeared to be false and also inconsistent with his affidavit.

279. WW-255 has not produced his Identity card, but has annexed two photographs in two certificates, one from the Commissioner, Sri R. K. Agarwalla and other from Sri Sudhir Kumar Barua, Ex. Shed Incharge, C.S.D. Dabgram. The two photographs as produced now, were different and present appearance of the witness, had no resemblance with those two photographs. He has not produced his Identity card. It should be noted that the certificate from the said Sri Barua, has for the first time produced through this witness. Earlier, no such certificate from the said Sri Barua was produced. He could not say, what were the contents of the Ration card as produced and in the card, there was neither his signature nor his LTI. He could not of course remember, if the card contained his LTI. There were interpolations on the Ration card, in respect of the name of his father and he could not say what were the reasons for that. The witness was not in a position to say what were the contents of Sri Agarwalla's certificate and was not in a position to say also, whether Sri Agarwalla knew his present address and whereabouts. He deposed on November 5, 1992 and has stated that the photograph as affixed in Sri Agarwalla's certificate, was snapped in October 1992. Although he was illiterate, he has stated that he gave the photograph to Sri Agarwalla, for affixing in his certificate and he gave the photograph of his own. I have already indicated that the certificate from Sri Barua was for the first time disclosed through this witness. The witness could not say whether Sri Barua, on the date of certifying, had the authority to certify about his workings under the said Corporation or if he had worked under him. He was not aware of the contents of the certificate and was candid enough to say, it would not be possible for me to recognise the signature of Sri Barua and his certificate was on a plain paper, without any seal of the said Corporation and it was given to him, on his asking. Although he said Sri Barua was in service, when he issued the certificate but the witness was not in a position to say since when he was not in service or if he had the authority to issue such certificate. It was suggested to him that there is or was no such officer by the name of S. K. Barua, to which his answer, was not very categorical. To Sri Barua, also the witness has said to have given the photograph of his own, but could not say, why the photograph was given to Sri Barua. But, all these facts, he has not mentioned in his affidavit. He has produced one Union receipt of 1990, but was not in a position to say what were the contents of the same. He could not say, if he had received the receipt for 1991 and was not in a position also to remember, if he had received the receipt for 1991 also. Although, he has said about the signatures in the Union receipt, but he was not in a

position to identify them. He has said to have worked with the said Corporation since 1972 and on 21-7-1975, he was terminated, but he had no evidence to establish that. He could not also, like many others, say what was the name of the 7th month or the 5th month of a year, when asked. Regarding Permit slip, he made the same statements like others, but on being asked, he said, he could not remember the contents of the same or if he has said about the loss of the Permit slip and he has not filed any information for such loss and has not mentioned about such loss to the said Corporation. His evidence regarding age, was not convincing, like others. In fact, he could not remember what was his age in 1987 or what was his year of birth and how old was he, in 1975. He has said that his father is dead, but could not produce any evidence. It was his evidence that from 1972 to 1989, he was staying at Khalpara, Siliguri, but unfortunately, he has no evidence for that and the Commissioner's certificate is silent on such point. He was candid enough to agree that he has made the statements regarding Supreme Court case, after hearing from the Union. But, did not remember, whether such fact has been stated in the affidavit. He could not identify the signature of Paul Babu. The present appearance of the witness appeared to have no resemblance with the photographs as produced, which again, as stated, had differed amongst themselves. His evidence was to a great extent inconsistent with his affidavit.

280. WW-256 has not also produced his Identity card and similar to WW-255, the two photographs as produced by him, one through the certificate of the Commissioner, Sri R. K. Agarwalla and the other through Sri S. K. Barua, different. The present appearance of the witness had of course some resemblance with one of the photographs. It was his evidence that he was 28 years of age, when he received the Ration card, but could not say, what were the contents of the same. It was his evidence that he got the present Ration card on deposit of 1986 Ration card. But, there was no convincing evidence produced by him, to that effect. He has said, the photograph as affixed in the certificate of Sri Agarwalla, was snapped at a point, when he was 44 years of age. It was his evidence that from 1972 to 1989, he lived in a shanty on the Railway land, without any permission, but such stay of his in a shanty, has not been mentioned by Sri Agarwalla in his certificate, although the witness said that Sri Agarwalla knew him. Not only in the certificate as issued to this witness, but also to WW-255, Sri Barua has testified to know them to be working under him from 1972 to 1974 and that fact would not be enough to show that they were employed in 1975, although both of them had said to be working from 1972, and was terminated on 21-7-1975. The witness said that Sri Agarwalla's certificate contained his name, LTI and photograph. But, he was not aware of the contents of the same and the certificate was issued by Sri Barua, after hearing him and not on consulting any record. The witness has produced one Union receipt of 1990 and was not in a position to say about the loss of the other Union receipts, but he stated categorically, that he did not receive the receipt for 1991. He was specific that the copies of the lost receipts, will be with the said Union. But, they have not been produced by them. He could not also say about the contents of the receipts as produced or could identify the signatures of the signatories therein. He could not also name the 7th month of the year. Regarding the Permit slip, his affidavit was on the same line like others. It was his evidence that Paul Babu signed the said slip in his presence and he had affixed his LTI in the presence of Paul Babu. He could not mention either the date of the Permit slip or the contents thereof, but said, that he made statements about the loss of the permit slip to his drafting lawyer. There is no evidence produced by him, regarding the strike in 1975. His evidence regarding age, was no better than other and he did not remember, what was his age in 1985 or in 1975. But said, that he was 28 years of age, when he received the Ration card. He was not aware of his date of birth, neither he could remember the same and said, that he lost his father 2 or 3 years ago, was not remembering the date and year. The present appearance of the witness had some resemblance no doubt, with one of the photographs, but such resemblance will not be of much help and assistance, as that would not establish, what was his appearance in 1975 or 1978. He could not also recognise the signature

of Paul Babu. The evidence of the witness was inconsistent with his affidavit.

281. WW-257 has not produced his Identity card, but has produced two photographs, one annexed to the certificate of the Commissioner, Sri R. K. Agarwalla and other with the certificate of Sri S. K. Barua. It was his evidence that he was 42 years of age when he received the Ration card, but he could not remember what was his age either in 1985 or in 1975. He was not in a position to say, what were the contents of the certificate of the Commissioner and he did not remember the residential address of the Commissioner. It was his evidence that from 1972 to 1989, he was at Siliguri. But, he agreed that he had no evidence to establish such fact. While on the certificate of Sri Barua, he said that he was not aware of his residential address and he had no evidence to show, his workings under Sri Barua, who at the time of certifying, had retired. He also said Sri Barua has certified that he knew that the employee had been working under him till 1974, but that in my view, will not establish that he was employed in 1975 or thereafter. The witness has said that the certificate of Sri Barua, was not on any form of the said Corporation or with their seal. But, the same was on plain paper. Although the witness has said Sri Barua signed the certificate in his presence, but he could not recognise the signature of Sri Barua. Here, the witness has produced two Union receipts of 1990 and 1991, but could not recognise the signatures of the signatories therein and he had no evidence to show, the receipts for other years, but has said, that the copies of the lost receipts are with the said Union, but such fact, he has not stated in his affidavit and has further said that he has produced his receipts for identification. The said Union has not produced the other receipts. His evidence was that, he was working with the said Corporation since 1972 and was terminated on 21-7-1975 and thereafter, he was re-employed, but he had no evidence of his workings either in 1975 or 1978. Regarding Permit slip, his evidence was no better than the other workmen. He was not aware of the contents of the said slip or had any other evidence to show that he really got the same or has lost the other receipts and for such loss, he has filed any information either with the Police or to the said Corporation. The witness had no resemblance with the photographs as produced and his evidence appeared to be absolutely tutored and inconsistent with his affidavit.

282. WW-258 has not produced his Identity card, but has produced two photographs, one affixed with the certificate of the Commissioner, Sri Agarwalla and the other with the certificate of Sri Barua. The certificate of Barua showed that he was known to him till 1974, as he was working under him. But that fact, in my view, will not establish his employment with the said Corporation in 1975 or 1978. He has said about affixing his LTI and the photograph in the certificate of Sri Agarwalla, but he was not aware of the contents of the certificate. He could not recognise the signature of Sri Agarwalla, but has claimed that Sri Agarwalla signed in his presence and has said that apart from that certificate, he has no other evidence to establish his workings. He duly said that the certificate was not in any form of the said Corporation, but the same was on a plain paper, without the seal of the said Corporation and Sri Barua gave the certificate, after hearing him and not on consulting any records. Regarding the certificate of the Commissioner, the witness said that his LTI and the photograph was affixed to the certificate and he gave the photograph for such affixation, of him own. He was not aware of the contents of the certificate, but said that he got the same for his identity and he told the name of his father to Sri Agarwalla and the certificate was obtained 18 days ago, from the date of his deposition, which was on November 10, 1992. It will appear that he has said to be drawing ration on the card as produced and he said his age was 43, when he got the Ration card, which was without his LTI, but he could not say, what was his age in 1985. It was his statement that from 1972 to 1989, he was staying at Khalpara, Siliguri. But, unfortunately, the fact, the Commissioner, as claimed to be knowing him, has not testified. He has produced 3 Union receipts of the said Union, which bore the registration number of the Union as 8219 and other one showed the registration No. as 8218. This discrepancy in the registration number of the said

Union, appeared in many cases, as indicated earlier. Such fact was very difficult to be reconciled and in fact, no attempt was made to reconcile them. He was not aware either the contents of the receipts of the signatures of the signatories therein. It was his evidence that he was working in the said Corporation since 1972 and was terminated on 21-7-1975 and thereafter, he was employed for 4 months in 1978. But, regarding his service, he had no evidence, excepting the certificate of Sri Barua. He could not mention the name of the 7th month. It was his evidence that he received an Identity card from Dutta Babu, D. M. But, when he received the same, was not remembered by him. He has said to have lost the said Identity card, but agreed that there was no evidence to establish such statement and there was also no evidence to show that in 1978, he received such a card or he was aware either of the contents of the same or the date thereof and further, for such loss, he has neither lodged any information with the Police nor informed the matter to the said Corporation. His statements regarding Permit slip, were similar to that of others viz. he received the Permit slip from Paul Babu, with his signature and on affixing LTI in his presence, but he has lost the same. He could not produce any evidence regarding the receipt of the Permit slip and was not in a position to remember the date, when he received the same and further, he could not mention the post, which was being held by Paul Babu. He could not remember exactly, what statements he made in the affidavit, although the same was affirmed 6 or 7 days before his deposition, which was on November 10, 1992. He claimed that his statements regarding Payment Sheets were not false, as suggested. The witness could not identify the signature of Paul Babu and he appeared to be absolutely tutored and his evidence was false and inconsistent with his affidavit too. The present appearance of this witness had little resemblance with the photographs as produced and such production itself, will not be enough to establish his employment either in 1975 or 1978, as from the photographs as produced, his appearance on those years cannot be established and really, the same has not been established.

283. WW-259 had no Identity card, but has produced two photographs, one affixed with the certificate of Bejoy Babu and the other, with the certificate of Sri Dhiren Kumar Banerjee, even those two photographs differed. It was stated that one of the photographs was snapped on March 15, 1992 and the other was on June 26, 1990. His Ration card was a duplicate and the same showed payment of .50 paise, as a charge. The said Ration card bore no LTI of the witness and he was not remembering to the age as mentioned in the Ration card. He has said to be staying at Khalpara, Siliguri. But unfortunately, the Commissioner's certificate is silent on that point. It was his evidence that although he was a resident of Ward No. IX, the Commissioner whereof was Sri R. K. Agarwalla, but he had to take the certificate from Bejoy Babu, as he could not meet the said Sri Agarwalla on many occasions when he went, but he was not remembering the dates, when he went to meet Sri Agarwalla. Such statements regarding inability to meet the Ward Commissioner and thereafter, obtaining a certificate from Bejoy Babu, were made by many of the workmen, which fact will appear from their evidence, as recorded earlier. Although this witness has said to have obtained the certificate from Sri Dey in the facts as stated but such fact, has not been disclosed in his affidavit and he claimed to have obtained the certificate from Bejoy Babu, for his identification. It appeared to me that Bejoy Babu was very much and readily available to grant such certificate, as in this case. It was his evidence that others have received Identity cards, but he did not, but there is no such statement in his affidavit to that effect and he was not aware of his age or when the photograph in Banerjee Babu's certificate was snapped, although he said such snapping was in 1990. It was his evidence that he was staying on a Government land between 1970 to 1990, at Khalpara and this fact was known to Banerjee Babu, but unfortunately Banerjee Babu's certificate was silent on that point. It was his evidence that he made the statements regarding the Supreme Court case on hearing from Deo Prasad, but such fact, he has not said in his affidavit. He did not remember the contents of the certificate of Dhiren Babu or his residential address and has said that at Siliguri, there is no residential address. He said that Dhiren Babu wrote the certificate in his presence and so also the words "Specimen signature"

and "LTI", but he has made such statement in his affidavit. He did not remember other the date if that certificate or his age, when he got the Photograph, as affixed with that certificate, snapped. But he mentioned the year of such snapping as 1990 and said that the certificate was not on any form of the said Corporation, with their seal, but the same was on a plain paper and he was not aware, if Dhiren Babu had the authority to grant such certificate and said further, that the papers regarding his employment, are with the said Corporation and he approached Banerjee Babu, since he knew him. Although he said that papers regarding employment will be with the said Corporation and he approached Banerjee Babu for such a certificate as in this case, but, if any money was due from the said Corporation, he was aware that he should approach them. The writings in the Union receipts as produced, could neither be said to be made by whom nor he could say, who were the signatories in those receipts. It was his evidence that he was employed with the said Corporation in 1970 and was terminated in 1975. He has said that he worked under Direct Payment System in 1973, but there was nothing to establish his evidence. Regarding receipt of payments through Payment Sheets, his evidence was not very satisfactory and in fact, he said, that he did not remember the statements as made on that account July. His evidence regarding Permit slip, was in the same line with other workmen. He could not produce any evidence showing that he received the Permit slip in 1975. But said that the copy is lying with the said Corporation. He was not in a position to remember the writings in the Permit slip and Payment Sheets. Although he stated that he was a resident of Khalpara, of which the Municipal Commissioner was Sri R. K. Agarwalla, but the fact of such stay as indicated, has not been indicated in the certificate of Banerjee Babu or Sri Agarwalla. His evidence regarding age, was most unsatisfactory and he could not even remember what was his age in 1975. But said, that his declaration of 44 years of age as made in the affidavit, was on the basis of hearing from his elder brother. Regarding the loss of the Permit slip, he has not admittedly filed any information with the authorities and the fact that he was staying on a Government land, could not be established by him, on production of any paper or evidence. The evidence of this witness was not only false, but the same was inconsistent with the statements as made in his affidavit. He could not also identify the signature of Paul Babu. The present appearance of this witness, had no resemblance with the photographs as produced and it is very difficult to find out, what was his appearance either in 1975 or in 1978, on the basis of the available evidence.

284. It was submitted on behalf of the said Corporation and firstly, by Mr. Pathak and thereafter, by Mr. Ghosh that identification of individual workman (WW-219 to 259), have not been established in accordance with law and duty. It was submitted that age, which was vital in a service matter, has not been duly proved and established and to establish the age, the employees concerned, have not actually produced anything excepting the Ration card. It was pointed out that no certificate in respect of the respective ages of the workman concerned, have either been produced or such age has been proved by any independent evidence. It was indicated that the evidence of the workman, in respect of their ages, were not only inconclusive, but they were inconsistent with the available evidence and also with the statements as contained in their affidavits. It was contended that the evidence of residence of the employees concerned, as produced, were not for the relevant period and in fact, even on the basis of evidence as produced through different certificates, no evidence has really been produced in respect of their stay in a particular place or the period of which they were and/or are there. While on the point, it was indicated that the certificates as produced from different Commissioners, only have mentioned that the employees concerned were permanent resident of Siliguri and that according to the said Corporation, was not enough. It was further submitted that no reliance, on the certificates as produced, can or should be placed, as those who issued the certificates, have neither come forward nor deposed in respect of the certificates and to prove them.

285. It was pointed out that practically, all the workmen have stated that they were terminated on 21-7-1975. Unfortunately, excepting one or two of them, none have been

able to name the 7th month and they have not produced any evidence of their workings in that period or 4 months in 1978, as claimed. It was further pointed out, that there was no evidence of workings of the workmen concerned, under contractor's system, although some of them have said to the working under contractors. But, they could neither name the contractors nor establish their workings under them, with any legal and acceptable evidence. It is stated that the workmen concerned have stated about receiving their remunerations on signing the Payment Sheets, but it was pointed out by the said Corporation that no evidence of such fact has been produced and whatever statements, the employees concerned have made, in respect of payment sheets, were on hearsay or on assumptions and such statements, the workmen concerned have made here, only for the first time. It was submitted that since the statements, in respect of the above, were based on hearsay, no reliance should be placed on them and similar will be the position, in respect of the employees saying that they were one amongst 464 employees as involved in the Supreme Court case, as such fact, was also based on hearsay. On the above issue, I hold and find that the employment of the workmen, whose cases are being dealt with now, have not been conclusively proved and established.

286. While on the question of Permit slip, the said Corporation pointed out that without any doubt or difference, all the employees have stated to have received such slip from Paul Babu in 1975 and after the strike, but, all of them, have either lost or some of them have said that such slips were not available with them. In any event, it was pointed out that there was no evidence of either the receipt of such slips or the loss of them, duly produced and proved by the employees concerned. I shall point out hereafter, the particulars of the employees, who could produce the Permit slips or who could identify the signatures of Paul Babu therein and those, who could not produce the Permit Slips at all. It was pointed out by the said Corporation that the statements in respect of the Ration Cards as produced by the employees, could not claim better effect than what has been stated in respect of the Permit Slips. It was pointed out that all Ration Cards were duplicates and bearing one or two or may be few, there were no LTI or signatures in those cards. It was indicated that even though the employees said that they obtained the present Ration Cards, on deposit of the earlier Ration Cards of 1986, there has in fact, been no evidence to that effect. In any event, the cards as produced, will not cover the relevant periods or even if they covered the relevant periods, they will not be enough to establish the employment of the workman concerned, with the said Corporation. In any event, the Ration Cards, even they are taken into consideration, they will, at best establish the stay of the employees at Siliguri or somewhere there, but not their employment with the said Corporation, which is required to be found out and established.

287. There were certificates obtained from Commissioners like Bejoy Kumar De, Shanti Chakraborty and Ram Kumar Agarwalla and others. It was indicated by the said Corporation that the employees, who produced those certificates, have unequivocally stated that they were not aware of the contents of them and bearing few, all the workmen concerned, have not been able to identify the signature of the Commissioners and in fact, Bejoy Babu and other Commissioner, in some cases have issued the certificate to the workman concerned, although he was not the Commissioner of the Ward, where the workmen resided. The said Corporation indicated that even the Commissioner's certificate have not been duly proved and brought into evidence, as the Commissioners have not come and deposed to the validity and issue of their certificates. It should be noted that amongst all the Commissioners, at least Bejoy Babu was very easily available, to certify about the stay of the employees concerned and the way and manner in which the certificate have been issued, would not be enough to establish that the workmen concerned were the employees of the said Corporation at the relevant time and if at all, the certificates will help establishing the only fact that they were staying at Siliguri or anywhere there, at the relevant time.

288. To establish the workings with the said Corporation, firstly, some workmen have produced their Identity cards

and they are in this group, WW-224(W-1256), WW-225 (W-1221), WW-228(W-1212), WW-234(W-1193), WW-236 (W-1181), WW-241(W-1216) and WW-245(W-1203). Apart from the above, other workmen WWs. 219, 220, 226, 231, 232, 243, 246, 248, 250, 251, 252, 253 and 259 produced certificate from D. Banerjee and WWs. 221, 222, 223, 227, 229, 239, 233, 235, 237, 238, 239, 240, 242, 244, 247 and 249 produced certificate from Narendra Nath Sarkur and workmen Nos. WW-250, 255, 256, 257 and 258 produced certificates from Sudhir Kumar Barua for the purpose of establishing their workings with the said Corporation at the relevant time. It is an admitted fact that the 3 officials as mentioned above, had retired at the point of time, when the certificates were obtained from them and their certificates were only on plain papers and not on any Form of FC1 or with their Seals. Further more, it appeared from the evidence that these officers issued the certificates after hearing the workmen concerned, who have claimed to have worked under them, but that too without any legal evidence, at the relevant time and those certificates were issued, not on consultation of any records. It was pointed out by the said Corporation that since the officers as mentioned above, were not in service of the said Corporation at the time of issuing the certificates, the certificates as issued, were neither valid nor they were issued on proper authorities. In fact, many of the employees have agreed that the papers of the employees, who worked under the said Corporation or were working under them, will be lying with the said Corporation and not with the certifying officers. The employees claimed to be illiterate, but they were conscious of the fact that if any money is due to them from the said Corporation, they will approach them and not the officers, who have certified. It was their case that they have approached the officers concerned, as they have worked under them at the relevant time and many of them, wanted to say that why and how they could approach the said Corporation for any certificate, as the said Corporation have driven them out and that if why, they obtained the certificates from the officers as mentioned above, whom they knew or under whom, they have worked. These statements will go a long way against the contentions of the workmen concerned that they were illiterate, as they could realise the effect as above and even then, they claimed to be illiterate. But it would appear that for establishing their identity, they have said that they got affixed, their recent photographs with certificates as produced, for establishing their identity. Such vigilance was not expected from those persons, who have claimed to be illiterate.

289. The said Corporation has referred to the evidence of WWs. 220, 224 to 226, 228, 233, 234, 236 to 238, 241, 247, 252 and 258 and pointed out that amongst these workmen, some have produced the Identity cards and have said to have rejoined the said Corporation in 1978, but have not been able to prove their workings in 1975 or in 1978. It was also pointed out that all the workmen as mentioned above excepting one (WW- ) have said to have lost their Identity Cards but they have neither been able to produce any evidence in receipt of such Cards or could establish their identity of the Cards, duly. One workman mentioned above has only lodged a General Diary, but he has not mentioned the year of such diary. It was further pointed out that evidence of the workman as mentioned above, was inconsistent with the statements in the affidavit and all affidavits were not only in the same type and form, but they contained similar statements, as if, the statements were tuned in one tone. The workers as mentioned above according to the said Corporation, have not been able to produce their Permit slips. While dealing with the respective case and scanning the evidence as indicated and the manner and the way such slips were either produced or sought to be proved and brought into evidence, was not due and conclusive. Barring the allegations as recorded, the Permit slips have not been duly and legally proved and there was grave doubt and disputes over the signatures of Paul Sahab, for the same as indicated by me in earlier paragraphs.

290. It was then claimed by the said Corporation that the contents of the documents as produced, were not proved and as such, they have no probative value and more particularly, the documents as produced, were inconsistent with the statements as made and such inconsistencies were also apparent in respect of the statements as made by the workmen regard-

ing their age, Ration card and address. It was indicated further that the workmen concerned, if not all, but majority of them, have stated to be staying in shanties or lands which either belonging to the Railway or to the Government. It was pointed out that there was no relevant, cogent and legal evidence, to establish such fact and such stay of the workmen concerned, have not also been established by the certificates obtained from Commissioners, as those certificates do not contain the fact of staying in shanties by the workmen. The certificates, no doubt have mentioned that the workmen concerned was staying at Siliguri for a long time and this, the said Corporation claimed to be, too vague for placing any reliance. In any event, I held, even the residence of the workmen are established, which in fact, has not been, that would not have helped them to establish their employment with the said Corporation, at the relevant time.

291. While on the Identity card, it was submitted that no reliance on them can be placed, because they have neither been duly proved nor brought into evidence legally and the signatories of the cards have not appropriately deposed, to testify to the correctness of the entries. On a reference to the Identity Card, bearing No. W-1221 and W-1216, it was pointed out that entries therein, were absolutely fresh, although, they appeared to have been signed in 1978 and that according to the said Corporation, raises reasonable doubt as to their genuineness, and veracity and would go a long way to establish that these cards were prepared in collusion with the said Union, since Deo Prasad WW-1, as stated earlier, was given the blanket authority to sign the Identity cards. Then, while on the Permit Slip, the said Corporation, on a reference to the case of WW Nos. 219 to 221, 224, 225, 227 to 233, 235, 237 and 238, pointed out that the defects as indicated earlier, were apparent and those cards could not be looked into or considered for such defects and more particularly when, they were neither produced nor brought into evidence duly. I have indicated earlier, the defects in the nature and character of the seals of the said Corporation and the manner, in which they have been affixed. The seals in the cases of the Identity cards as produced, also suffered from the same or similar defects.

292. Mr. Das Chowdhury, on reference to the evidence of WW-1 indicated that the same will establish that Permit slips were issued and he has produced a chart showing the employees, who could produce the Permit Slips in this group of employees and he further indicated that since the Permit Slips show different numbers, that fact will establish that they were actually issued, for the purpose of identifying the workmen concerned, to enter the said Corporation after the strike. The chart as filed by Mr. Das Chowdhury has been kept in the record. He further pointed out that apart from Identity cards many of the employees have stated about the receipt of the permit slips and the evidence will show that not only the possessors of the Identity cards, but also others, were issued permit slips and that according to him, was for facilitating the entries of the workmen concerned into the shop of the said Corporation, after the strike in 1975. Mr. Das Chowdhury further said that there is no dispute that the workings of 64 employees were discontinued and he said, this fact will also appear from a reference to the written statement as filed by the said Corporation and the sole question according to him, will be, if there was evidence of actual workings and to establish such fact in the affirmative, it was indicated that the evidence of WW-1 Deo Prasad, would be more than sufficient, as he knew all the Identity card holders, as they worked with him and he also knew many of them, as the Secretary of the concerned Unit of the said Union. It was further pointed out by him that WW-1 Sri Jann has identified all the Identity cards, signed or issued by Sri Banerjee, who has expired. I have already indicated my views earlier, regarding the evidence of Sri Jann and the effect of his identification of the Identity cards and so also that of Deo Prasad WW-1. On a reference to the evidence of WW-219, it was indicated by Mr. Das Chowdhury that paragraph 1 of all the affidavits as filed upto today, were in one and the same line and all witnesses have said about the workings in 1975 and as such, those statements can be looked into considered and taken note of. While on freshness of the Identity cards, some instance whereof have been indicated by the said Corporation, Mr. Das Chowdhury submitted that such freshness will depend and may vary for the manner in which the individuals maintained their cards. Even we accept such submissions, on the

basis of the intrinsic evidence as available, it is very difficult to place much reliance on the Identity cards as produce and that too, for the reasons in respect of the Identity cards as indicated by me earlier.

293. While on Ration cards or the duplicate as produced, Mr. Das Chowdhury pointed out that the Ration cards contained Folio and other numbers. So, even though there were neither signatures nor LTIs in those cards, they can be considered to be genuine duplicates. As indicated by me earlier, the supply of duplicate cards, requires a payment of fee 50/-. Mr. Das Chowdhury pointed out that in some cards, there is nothing of such payment. That fact, is some what true, as such payments are noted in the cards of WW-242 and WW-243 of this group, but not in all. Such non availability of the entries of requisite fee for the duplicate copy, is enough to hold a suspicion, that all cards were not genuinely obtained. That apart, even though the cards in question are taken into consideration, they will not in my view, establish the fact of employment of the workmen concerned, with the said Corporation at the relevant time. Mr. Das Chowdhury could not dispute, that there are discrepancies in respect of the age of the workmen concerned, as deposed, with their affidavit and sometimes, such statements were inconsistent, but that according to him, will not disprove the identities. While on the identity, these workmen concerned who have not been able to produce their Identity cards, have produced photographs, affixed to the certificates as produced and that fact, according to Mr. Das Chowdhury, was enough to hold in favour of the identity of the workmen concerned, as the photographs as affixed, have been duly attested, not only by the Commissioners, but also by the other officers as mentioned. While dealing with individual cases, I have indicated the effect or the evidentiary value of those photographs and how far they have agreed with the present resemblance of the workmen concerned, with the photographs. As stated earlier, I have indicated such fact of resemblance at the back of each affidavit. I shall deal hereafter, with the effect of resemblance or otherwise of the photographs of the employees concerned, with their present appearance. In any event, I hold that none of the present photographs of the workmen concerned have established their resemblance either in 1975 or 1978, when admittedly, their appearance have been or are expected to be, changed after a long gap of 15/17 years or more.

294. Like the cases of earlier workmen, Mr. Das Chowdhury submitted that the general approach in the case of the present nature, should be to find out, if essential substance has been proved and only that fact, will have to be considered, to establish such essential consideration viz. if the employees were employed with the said Corporation. Mr. Das Chowdhury pointed out that the employees concerned have produced their Identity cards in many cases and said about the permit slips in all the cases and those, who could not produce their Identity cards, have produced certificates from the other authorities as mentioned above and he pointed, that the said Corporation, in their turn have neither produced any witness nor any document to disprove the validity of these certificates or have produced any evidence to the contrary and as such, adverse inference should be drawn. It was contended by him that without putting forward any suggestion or proving anything contrary to the above, the said Corporation has taken some technical objections, regarding validity of the evidence as produced, which according to him, should be ignored. It was further submitted by him that since the workmen concerned, have boldly faced the cross-examination and they were not expected to come with any forged, fake or procured any fabricated documents, so, they were not required to prove anything also and if at all, the said Corporation, which have the necessary evidence, should have produced such evidence or the real person, when they have taken such technical objections regarding the validity of the photographs as affixed with the certificates and so also the certificates. He further pointed out that resemblance or otherwise of the employees concerned should have noted in the evidence. I have already indicated the way and the manner in which I have recorded my remarks against appearance of the witnesses at the back of their respective affidavits and such recordings were made on the dates when the recording of evidence was completed, while sitting in Court and no exception was even taken. This fact of submissions, I have already dealt with earlier, while dealing with the cases of other employees and since,



the facts are all the same and similar, I do not think further reiteration of these statements would be necessary. I made the same observations as indicated in paragraph ——— in respect of the above submissions of Mr. Das Chowdhury.

295. Mr. Das Chowdhury agreed that the workmen concerned have remembered the specific date of their termination in 1975, as 21-7-1975, but not the date in 1978. since in 1975, there was a definite date, when series or large number of workmen were terminated on the same day and he further submitted that since these proceedings are continuing for a long number of years, so it may be that all the workmen were not remembering the dates specifically, but some of them have remembered them or when they were re-employed. He further claimed that the non-production of Identity cards will have an effect and reasonable presumption on them, should also be drawn. He indicated that some of the employees received Identity cards in 1978, but many did not, and even some of those, who got the Identity cards, have lost and as such, they have produced the present photographs, certified, not only by the Company's officers, but also by the other authorities. The photographs according to Mr. Das Chowdhury, should be considered along with the certificates as produced and on such consideration, there will be no doubt about the fact that the identities of the workmen have been established. It is true that the photographs as produced have been certified by those authorities as mentioned, after 15 years or more and as such, I feel that recent appearance of the workmen, even though they agreed with the recent photographs, will not be enough to establish their appearance at the time of employment, either in 1975 or in 1978. The production of the photographs or the photographs themselves, were not enough to prove and establish the employment of the employees concerned in the said Corporation.

296. In this group of cases, for the first time, the employees have produced certificates with photographs affixed from Sri Sudhir Kumar Barua, but his certificates have shown that he knew the workmen concerned till 1974, when he retired. While on that question, Mr. Das Chowdhury pointed out that the fact Sri Barua knew the employees concerned till 1974, will be enough to establish their workings in the said Corporation, in 1973 or before that. But, he could not disagree that such evidence may not establish the employment of the workmen concerned with the said Corporation in 1975 or thereafter.

297. At the time of dealing with the individual cases of this group, I have already indicated my views on the facts as sought to be established through Ration Cards, certificates of the Commissioners and other authorities, the Union receipts, which findings again, have substantially agreed with the frank and fair submissions of Mr. Das Chowdhury, to the effect that they will not establish the employment of the workmen concerned with the said Corporation or their identities on that account. Such submissions were of course made by him with the exception of the certificates issued by the erstwhile officers of the said Corporation. I again repeat and indicate that these records other than these certificates by the officers of the said Corporation as produced, may at best establish residence of the workmen concerned at Siliguri and their membership of the said Union, but such evidence, will not in any event, support the cases of employment of them, with the said Corporation, at the relevant time viz. either in or upto 1975 and thereafter, for 4 months in 1978 or after that. It must also be kept on record that the certificates as produced, do not also indicate or establish, since when, the workmen concerned were residing at Siliguri or their respective address. The certificates of the officers of the said Corporation, for the views as already expressed by me, will not help to establish the employment of employees concerned with the said Corporation at the relevant time.

298. In paragraph 220, while dealing with the other group of cases, I have already indicated the nature, character and manner of the certificates issued by Bejoy Babu, Shanti Babu and others and so far these group of employees are concerned, the certificates as produced according to me and if at all, have established the stay of the emp-

loyees concerned, some where at Siliguri only, since their actual addresses have not been mentioned or shown. Thus, I keep it on record that these certificates cannot be taken into consideration for the employment of the employees in this group with the said Corporation for the relevant period. It should also be indicated that apart from the certificates obtained from Sri Banerjee, Sri Sarkar and also from Sri Barua, which was done for the first time from these group of employees, are not enough to establish the employment of the employees, as certified by them, with the said Corporation, after 1974 or 1975 or thereafter, in 1978. In fact, Sri Barua has admittedly stated to be knowing the employees in whose favour he has issued the certificates, to be knowing them till 1974.

299. I have dealt with the character, manner and evidentiary value of the Ration Cards as produced, in respect of the earlier group of employees in paragraph 221 of this Award and I keep it on record, in the view of such findings as made in paragraph 221 in respect of the Ration Cards in this group of employees, on the basis of the provisions of the relevant Rationing Order as indicated in paragraph 221, I feel that the Ration Cards as produced in respect of these group of employees, are not enough to place any credence. Although all the Ration cards were xerox copies of the duplicate Ration Cards, but only the cards in cases of WW Nos. 242, 243 and 249, show that 50 p., which is the required fees for obtaining the duplicate Ration cards, have been paid. These Ration Cards, I also repeat, can only be relied upon, if at all, for the residence of the employees concerned at Siliguri. But, they will not in any event establish that the employees concerned were employed with the said Corporation at the relevant time.

300. On the basis of the evidence as available, it would appear that either Dhirendra Kumar Banerjee or Narendra Nath Sarkar or S. K. Barua, were in services of the said Corporation at the time of issuing their certificates in favour of the employees concerned and the certificates were issued on plain papers, not on any form of the said Corporation or with their seals. It further appeared that certificates were issued by the aforementioned persons on hearing from the employees concerned and not on the basis of any records. It cannot be doubted or disputed that officers, who have already retired, will not be duly authorised to issue such certificates as in these cases under consideration and the issue of these certificates by them, in my view, was without any authority and power. Even if the above views are not accepted, I feel that the certificates as produced, have not duly established the workings of the employees concerned at the relevant time with the said Corporation and that too in view of my findings amongst others in paragraph 298. It must also be noted that makers of the certificates have not appeared to prove their certificates of the contents thereof or execution and as such also, the certificates as produced cannot be taken into consideration. It must also be noted that I have indicated in paragraphs ——— above, the respective persons or the employees in whose favour, the certificates, have been issued and by whom and so also their probative value.

301. So far the Permit Slips are concerned, the evidence as tendered through the employees were on the same line and manner and only WW Nos. 219, 220, 221, 225, 227, 228, 229, 230, 231, 232, 233, 235, 237, 238, 240 and 252, if at all, could say that they can identify the signature of Paul Babu and the identification of his signature as made by WW Nos. 219, 220, 221, 224 and 228, do not tally with the admitted signatures of Paul Babu or the mode and manner of his signature.

302. It should be noted that so far the resemblance of the employees, who have deposed in these group of cases, they can be divided into groups having (1) no resemblance, (2) some resemblance, (3) little resemblance and (4) clear resemblance, WW Nos. 219, 221, 225, 233, 234, 235, 241 to 252, 255, 257 and 259 had no resemblance with their present appearances and photographs as produced with the certificates. WW Nos. 218, 220 to 224, 226 to 232, 236, 253, 254 and 256, had some resemblance with their present appearance with the photographs as produced. WW Nos. 237, 239 and 258 had little resemblance with the photographs as produced and the appearances of 2 employees viz. WW-238 and WW-240, had clear resemblance. In view of the above, I think the employees coming under

groups 1, 2 and 3 are not required to be dealt with and considered any further individually and that too, in view of the observations made against them, while dealing with their cases. But I think, the workmen coming under Clause (4) above, i.e. having clear resemblance will have to be dealt with, with more detailed reasons. The workmen under serial (4) are two in number viz. WW Nos. 238 and 240. WW-238 had his identity card, but has lost the same and the workman WW-240 has no identity card. They have relied on the photographs as produced with the certificates as mentioned earlier and while dealing with their cases. But since the photographs as produced now, were not of the relevant period and admittedly, snapped later than when they were employed and the certificates were not also of the relevant period of employment and were really of recent origin, the photographs as affixed and produced cannot be accepted as the photographs of the employees concerned and of the time relevant for their employment and also because of the admitted fact that their appearances today, cannot be the appearance of the relevant period and as admittedly their appearances today, have certainly changed or is expected to be changed, which fact has been admitted duly by many of the employees. It is reasonably expected that after 15/16 years or more the appearances of the workmen will change. Thus, even on the reasonable probabilities of the change of the present appearance of the two employees concerned from those of 1975 or 1978 and in view of the paucity of evidence regarding their stay at Siliguri at the relevant time and so also their employment with the said Corporation at the relevant time, it cannot be definitely held that they were employed with the said Corporation at the relevant time and as claimed. The above findings can very well and easily be applied in respect of all the other workmen, whose photographs were snapped after long laps of time from 1972 or 1978 and have also been produced, for establishing their identities, now.

303. The Identity Cards as produced by WW Nos. 224, 225, 228, 234, 236, 241 and 245, cannot be safely relied on, in view of my findings and observations as made earlier, in respect of the evidence of WW Nos. 1, 2 and 4 and more particularly, for their character, manner of execution and issue.

304. I have indicated my view in respect of the value of evidence as sought to be produced and established through the Union receipts. Moreover, I find that it is not safe and proper to rely on those receipts as the said Union has issued these receipts, as appeared from this group of employees, having two registration numbers viz 8218 and 8219 and such fact will appear from the records as produced by WW Nos. 244, 248, 254 and 258. No reasonable or any explanation has been offered for such defects.

305. This is and will be my Award in respect of the cases of WW Nos. 219 to 259 and I hold that the issues involved, cannot be answered in the affirmative and in favour of the workmen concerned or that they have been able to establish their identity of employment at the relevant time, with the said Corporation.

306. The representatives of both the parties to the dispute indicated that apart from the above, they will repeat and reiterate the submissions on facts and merits as advanced in the earlier group of employees viz. WW Nos. 1 to 218. Those points and facts, I have already determined in the earlier paragraphs relating to those employees and I felt that since those observations are equally applicable in the case of these group of employees, so, no fresh and further reiteration of those findings, would any further be necessary.

307. Now I shall deal with the cases from workmen numbers WW-260 to WW-289, the submissions on which, the parties have completed and they have now agreed in spite of my earlier observations dated January 20, 1992, to have the Award made in the cases of WW-1 to WW-289 as I expressed that since I am due to retire with effect from November 11, 1993, it will not be possible for me to complete the Awards in respect of the cases of all the 464 employees minus the cases of 56 workmen, who have already expired. They also agreed that thus it would be better, if the Award, as indicated above is made, instead of leaving them again, 521 GI/94—12.

for the determination of my successor in office and the cases as self over and not completed, be determined by him

308. WW-260 has produced an Identity card, bearing No. W-1126 and has stated that he has worked in the said Corporation since 1968 and thereafter, he was terminated on 21-7-1975 and after that, he was re-employed for 4 months in 1978. He could not of course produce any cogent evidence, regarding his workings since 1968. To establish his identity, he has produced the usual certificate from Bejoy Dey, Commissioner, Siliguri Municipality. He said that he did not know Sri Bejoy Dey and the contents of the certificate were not also known to him. The certificate of Sri Dey suffers from same defects like his earlier certificates. On the basis of the evidence on record, it cannot be agreed that the certificate of the said Sri Dey, has established the workings of the workman concerned with the said Corporation, for the periods as mentioned or for any period and that, can at best establish, the stay of the workman concerned at Siliguri, for some time. The Identity card, the number whereof has been mentioned earlier, appeared to have been issued by Dutta Babu, CLI and the same was dated November 14, 1978. The writings in the Identity card are to be looked into and considered and those writings were not under any date. The present appearance of this workman had no resemblance with his appearance, as appeared from the photographs, as produced. It must also be noted that although the workman has said to have been terminated on 21-7-1975, yet he could not name the 7th month and in fact, there is no evidence produced by him, establishing that he was terminated on July 21, 1975. His evidence regarding the names of the months in respect of other years as asked, were not very convincing. Like many other employees, he has said to have received a Permit Slip from Paul Saheb, and has also claimed to have lost the same, but he has not taken any steps against such loss and was candid enough to agree that the contents were not known to him. He could not identify/recognise the signature of Paul Saheb and agreed that such statement regarding Permit Slip, has not been mentioned by him earlier or any where. In the Identity card, there was of course a L.T.I. At one stage, he has also said that he was re-engaged for six months in 1978, which was discrepant from his earlier statement. His evidence regarding age was inconsistent and not intelligible. It was his evidence that he was staying at Siliguri from 1968 to 1989, but there was no cogent evidence to that effect. Even such stay will not establish his identity of Employment with the said Corporation. In fact he has also said, without any documentary proof that in 1973 there was Direct Payment System available in F.C.I. He of course stated, why and how, he has considered the Broad Sheets as Payment Sheet and agreed that he never asked for a copy of such sheet from the said Corporation. He could not identify the signatures of the signatories of his present affidavit. He has also produced a duplicate copy of the Ration Card stating that he was possessing such card since 1986, but there was no evidence of receipt of such card, which was a duplicate one, from the concerned Authority. He could not also recognise, if there was any signature at the back of the said Ration Card. On the basis of the evidence as adduced and available, the evidence of this witness appeared to be inconsistent in many respects and particulars and further is not enough, either to establish his identity of employment with the said Corporation at the relevant time or at any time. His evidence regarding the Supreme Court proceedings was based on hearing from Deo Prasad.

309. The workman WW-261 has not produced any Identity card but he has produced the usual certificate with his photograph annexed, from Bejoy Babu. He could not of course say regarding the contents of the certificate and although he was a resident of Ward No. 24, he relied on such certificate of Bejoy Babu, who was a Commissioner from Ward No. 29 and has said further, the residence of Bejoy Babu was not known to him and he did not remember the date, when Bejoy Babu issued the certificate. He has produced a certificate with his photograph affixed from Nagendra Nath Sarkar, but has agreed that the said certificate was not signed by Sri Sarkar in his presence. Neither the residence of Sri Sarkar nor the contents of the certificate were known to this witness and he has not produced any document, establishing his workings under the said Corpora-



tion. He was also not sure, when the Photograph was snapped. In fact, in his affidavit, there is no definite and complete statement regarding Sri Sarkar's certificate. Sri Sarkar admittedly issued the certificate at a point of time, when he was not in service of the said Corporation and his certificate, as usual, was on a plain paper and not in any form of the said Corporation or with the seal and such certificate was issued on the asking of the employee and that too, without looking into any paper. The language and contents of Sri Sarkar's certificate is to be looked into carefully. He was also not aware of the address of Bejoy Babu and he agreed, he got the photograph affixed therein, supplied of his own and has not given the same to Bejoy Babu, on his asking. Similar was his statement regarding the photograph as affixed in the certificate of Sri Sarkar. He has also said to have received a Permit Slip from Paul Babu, but could not recognise the signature of Paul Babu. He has produced a duplicate copy of the Ration Card and his evidence regarding age was very much inconsistent and he could not produce any evidence showing that he possessed such card since 1986, as claimed. He has said to have been employed initially in 1972 and was terminated on 21-7-1975, but could not mention the name of the 7th month. In fact, there was no evidence regarding his termination on July 21, 1975. While on the question of age, it must also be noted that he could neither remember his age in 1984 nor in 1975, but at the time of deposing, he declared his age to be 42 years. He could not establish by any evidence, about his workings under Direct Payment System or has asked for a copy of the Payment sheet from the said Corporation. He has produced receipts for establishing his membership of the said Union, but was not in a position to identify the signatures therein. He has said, not be possessing receipts, other than those he has produced. The production of these receipts will not in any event establish his identity of employment with the said Corporation. He has claimed to be staying on a vacant Railway land, but there was no evidence to that effect or any permission received from the Railway Authorities, for such stay. Bejoy Babu's certificate is also silent on such stay of the workman on the Railway land, although he has claimed to be staying there for a long time and Bejoy Babu knew him. Although the photographs as produced now, have clear resemblance with the present appearance of the workman concerned, yet on the basis of his inconsistent evidence, it is very difficult to hold that he has succeeded in establishing his identity of employment with the said Corporation at the relevant time, or at any time.

310. WW-262 has not produced his Identity card, but to establish his stay at Siliguri, he has produced a certificate from M. N. Chakraborty, Commissioner, Siliguri Municipality, but he could not say about the residential address of the said Commissioner and has agreed that he was not the Commissioner of the Ward, where he resides. He has annexed a photograph with the Commissioner's certificate and said that the same was given to the Commissioner by him, not on his asking and this photograph was snapped in October 1992 and that too, for his identification. But, he could not duly recognise the signature of the Commissioner. For the above purpose, he has also produced a certificate from N.N. Sarkar, who was not in service at the time of issuing the certificate, but the witness has claimed to have worked under him, when he was in service. He has claimed to have snapped the photograph in October 1992 and he was also not aware of the residential address of the said Sri Sarkar. He has claimed that after writing the certificate, the said Sri Sarkar read out the contents to him, but there is no legal evidence to establish such fact. The certificate was issued on a plain paper and without any seal of the said Corporation, but admittedly, at the time of issuing the certificate, the said Sri Sarkar was not in service and the employee concerned could not duly say, if the said Sri Sarkar, at that time, had the authority to grant such certificate. It was his evidence that he was working with the said Corporation since 1970 and on 21-7-1975, he was terminated, but there is no evidence of such workings of the workman with the said Corporation since 1970. He could not mention the name of the 7th month, although he claimed that he was terminated on 21-7-1975. He has produced a Permit Slip, received from Paul Saheb, containing his signature and the LTI of the workman concerned, but he could not recognise the signature

of Paul Saheb. There is no evidence produced by him that he received the said slip in 1975 and like others, he has also said to have lost the Permit slip and specifically, he has said, he could not get the slip for the last 2/3 years. There is also no evidence that for such loss, he has taken any steps or has filed a General Diary at the Police Station. He has deposed that he has not asked for the copy of the Permit slip, although he has lost the same. His evidence regarding age, was equally inconsistent like others. He could neither say what was his age in 1987 nor in 1975 or in 1989. He has said that his present age is 46 years and that too, without any legal evidence. It was his evidence that the present affidavit was drafted, after hearing him, but he could neither say nor remember, what he said to his lawyer, at the time of such drafting. Although he has said that the signatories of the affidavit, signed in his presence, but he could not recognise the signatures. He has said about the Supreme Court case, but was candid enough to say that he does not remember anything about the statements and he made such statements, on hearing from Deo Prasad. He has produced a duplicate copy of the Ration card, which he has claimed to be possessing for some time. In the card, his age was recorded as 46 years, but he could not say anything about the writings of the said card. But, it would appear that an endorsement of 50 paise, was available on the card, showing that this duplicate card was received on payment of charges. He has produced receipts showing his membership of the said Union, but it is very difficult to rely on these receipts as there, admittedly appeared, two Registration numbers of the said Union, being 8218 and 8219. The evidence of this witness, on consideration, appeared to be inconsistent and his present appearance had no resemblance with the photographs as produced. His evidence, to my mind, was inconsistent and the same has not established his identity of employment with the said Corporation at the relevant time or at any time. He has tried to avoid relevant questions by saying that papers were lying with the said Corporation. Even though claimed, yet, the workman concerned, could not establish his stay at Siliguri from 1970 to 1989.

311. The Workman WW-263, has not produced his identity card, but has produced two photographs, particulars whereof would be mentioned hereafter. The said two photographs as produced, differed. To establish his identity, he has produced a certificate from Sri R. K. Agarwala, Commissioner, Siliguri Municipality, attaching therewith his photograph and identified LTI. His evidence regarding his age was inconsistent like other witnesses, as mentioned earlier. The certificate of the Commissioner says nothing but only about his stay at Khalpara and the workman deposed that he got the photograph annexed to that certificate of his own. He could not identify the signature of the Commissioner. To further establish his identity he produced a certificate from S. K. Barua, who was not admittedly in service, when he gave the certificate on a plain paper and without the seal of the said Corporation. In the certificate, of course the workman has got affixed, his photograph and his LTI was also attested. He deposed categorically that the said Sri Barua gave the certificate on hearing him and without consulting any records. He has produced Union receipts for 1970 and for some other years and he has said that he was under Direct Payment System in 1973, but was terminated on 21-7-1975. But he could not mention the name of the 7th month. He has not produced any evidence, showing his service under Direct Payment System. His evidence was that, he received a Permit slip from Paul Saheb, but he could not identify the signature of Paul Saheb, although he said that Paul Saheb signed the Permit slip in his presence and he affixed his LTI in the presence of Paul Saheb. But, such fact, has not been stated by him in his affidavit. He could not say about the contents of the Permit slip and those of the certificate of Sri Barua. There is in fact, no evidence of his workings in the said Corporation, as claimed. He has said to have lost the Permit slip one year ago, but admittedly, he has not taken any steps against such loss or has asked for a copy of the said slip from the said Corporation. His evidence was that he is one of the employee concerned, out of 464 employees in the Supreme Court case, but he had no direct knowledge about the said case and his evidence was on the basis of hearing. On consideration of the evidence as recorded, this witness appeared to have deposed falsely and inconsistently, apart from the fact that he was a tutored witness. He has produced a dup-

licate copy of the Ration card, which according to him, was possessed by him since a long time and in his Ration card, there was neither any LTI nor any signature of the Agent concerned. Of course the duplicate copy of the Ration card showed the payment of the charges of .50p. It further appeared that there was also no resemblance of the present appearance of the workman, with the two photographs as produced and which again, differed amongst themselves. In any event, I feel that the witness has not been able to establish duly, his identity of employment with the said Corporation at the relevant time or at any time and if at all, by the certificate of the Municipal Commissioner, he has just established his stay at Siliguri, which will not be enough and sufficient to return a verdict in his favour.

312. The Workman WW-264, has not also produced his Identity card, but has produced two photographs annexed with the two certificates as annexed, which differed amongst themselves. To establish his identity, he has produced a certificate from Bejoy Dey, Commissioner, Siliguri Municipality, with a photograph attached therewith and his LTI, attested. He said that Bejoy Babu knew about his stay on Railway land, but unfortunately, Bejoy Babu's certificate was silent on that point. He could not also say about the writings in Bejoy Babu's certificate and his evidence regarding his age was absolutely inconsistent like many other employees. In fact, ultimately he said that he did not remember his age. He could not also say duly and establish, when the photographs as affixed, were snapped. He has further produced a certificate from D. Banerjee, with his photograph affixed and his LTI attested. He could not say about the residence of the said Sri Banerjee and admittedly, the said Sri Banerjee gave the certificate, when he was not in service of the said Corporation and it was claimed that he knew the employee concerned, when he was in service, as he was working under him. There was no evidence produced by the employee, as to when the photograph as affixed to this certificate was snapped and again he said that he did not remember the date of snapping the photograph. Admittedly, the said Sri Banerjee gave the certificate at a point of time, when he was not in service and the said certificate was not in the form of the said Corporation or with their seal. The witness has produced a duplicate copy of the Ration card, with an endorsement of .50p like the earlier witness, but he was neither aware of the contents of the Ration Card or could identify the signatures in the card. According to him, he was terminated on 21-7-1975, but as usual he could not name the 7th month or could produce any document, about such termination. He has said to have received a Permit slip, signed by Paul Babu, whose signature, he could not identify in 1975, containing the signature of Paul Saheb and his LTI. In fact, there is no cogent evidence showing, when he actually received the Permit slip and on being asked, he said that he does not possess the said slip at present and he has not asked for a copy of the same from the said Corporation. It was his evidence, from 1979 to 1989, he was staying on a Railway land without any permission. But he could not produce any evidence regarding such stay. In fact, the Commissioner has not, as indicated earlier, said anything about such stay. It was stated by him, on being questioned, that the affidavit was drafted by his lawyer, on the basis of the statements as made by him. He could not say what was his age in 1987 or in 1985 and in fact, he has said that he received the Ration card. It was his further evidence that he has not asked for production of any document from the said Corporation. The present appearance of this witness, showed no resemblance, with the two photographs as produced, which again, as stated earlier, differed amongst themselves. The evidence of this witness, on consideration appeared to be absolutely tutored. His evidence regarding the Supreme Court case or the position of the same or the decision as made, appeared to be based not on his own knowledge, but merely on hearing.

313. Workman WW-255 has not produced his Identity card which he has claimed to have been lost. But, there was no evidence to that effect. To establish his identity, apart from other evidence, the particulars whereof, would be indicated hereinafter, he has produced, 2 photographs annexed with the certificate of Bejoy Babu, the Commissioner of Siliguri Municipality and one certificate from Sri S. K. Barua. The

first photograph i.e. one attached to Bejoy Babu's certificate, differed from the present appearance of the workman concerned. He has agreed that the statements as made by him now, in the affidavit, were not read over and explained to him. But he claimed to be knowing the contents thereof. He has also produced another photograph, annexed with the certificate of the Commissioner, Shanti Chakraborty and there he has claimed, to have his LTI attested. His evidence was that he was staying on Railway land, which was known to Shanti Babu, but unfortunately, Shanti Babu has not said anything about such stay, in his certificate. By producing the certificate from S. K. Barua, with which another photograph was attached and LTI attested, he wanted to establish his employment with the said Corporation. He produced a certificate from Sri Barua and he was given the certificate at a time, when admittedly he was not in service and such certificate was also on a plain paper and without any seal of the said Corporation. He claimed to have snapped the photograph as affixed, on December 25, 1992 and he said his age was 46, when Sri Barua gave certificate. He has further said to be working with the said Corporation since 1970, but there is no evidence to that effect. He has claimed to have been terminated from his service on 21-7-1975 and re-employed in 1978. He could not mention the name of the 7th month, like others. It was his evidence that he was in direct payment system in 1973, but has not produced any evidence in support thereof. Although he has said to have received the Identity card, which was lost, from Datta Babu, but in fact, he tendered no evidence about such receipt of loss. He has said to have mentioned in his affidavit, the contents of the Identity card or his appointment in 1978. But, could not name or mention the specific dates. According to him, he received the Permit slip in 1975, signed by Paul Babu, where his LTI was appearing. But, he could not identify the signature of Paul Babu. In fact, he said that he was not in possession of the said slip. Although he claimed that the affidavit as filed, was signed in his presence, yet, he could not identify the signatures therein and his evidence regarding age, was inconsistent all throughout. He produced Union subscription receipts, which admittedly, would not establish the identity of employment. But, they could at best, establish that he was a member of the said Union, which will not be very material for this determination. But, it is difficult to rely on the receipts as produced, as it would appear that the same Registered Union, had two Registration number i.e. 8218 and 8219, which is not possible. His evidence, as a whole, appeared not only to be inconsistent, but false too and the present appearance of this witness had no resemblance with the photographs as filed. The witness has produced four Ration cards and from the intrinsic evidence appearing therefrom, it is very difficult to believe them the cards were not only duplicates, but the ages of the family members, as indicated therein, appeared to be very difficult to be accepted and followed. The union receipts as produced, may at best establish his membership of the said Union, but not his employment with the said Corporation at the relevant time. His evidence as a whole appeared to be false and not trustworthy.

314 Workman WW-266 had no Identity card. He has said to have produced a duplicate Ration card, containing his name, his father's name, address, but that card did not bear his LTI and he could not say anything about the signature of the Ration Officer. He has produced a certificate, from Sri R. K. Agarwal, Commissioner, Siliguri Municipality, annexing therewith his photograph and where his LTI has been stated to have been attested. He has said to have given the photograph for such affixation, of his own and the photograph according to him, was snapped prior to 1990. He did not remember his age or the statements as contained in the certificate of Sri Agarwal. He has also filed a certificate from D. Banerjee, along with his photograph and LTI, attested. But, he was candid enough to say that he knew nothing about the purpose of affixing the photograph and did not remember of such purpose. But, according to him, he gave the photograph, which was snapped at the same time in 1990, of his own and further agreed that Sri Banerjee did not sign the certificate in his presence. This Sri Banerjee was not admittedly in service, when he issued the certificate on a plain paper, without any seal of the said Corporation. It was his evidence that Sri Banerjee gave the certificate 2 or 3 days after his asking and he was not aware, if any record was consulted for such issue of the said certificate. It was his

evidence, without any due proof, that he has been working since 1972 and in 1973, he was working under Direct Payment System. He said that those records are lying with the said Corporation. His evidence was that he worked for 4 months in 1978, when he was terminated, but there is no legal evidence to support such statement. He has said to have received the Permit slip, signed by Paul Babu and which contained his LTI, but he could not identify the signature of Paul Babu and has said that such statement regarding Permit slip as made him now, were not repeated by him earlier or elsewhere. He has said to have lost the Identity card, which he claimed to have received from Dutta Babu. But, there is no evidence to establish such fact. He has said to be one of the employees concerned in the Supreme Court case and such knowledge, was derived, after hearing. His evidence regarding age, was absolutely in the same line and in the laconic manner like other witnesses and he agreed that the present appearance, has changed from his earlier appearance. He has said to be staying on Railway land and for that, he could not produce any evidence and the story of such stay on Railway land, appeared to be false. On comparison of the present appearance of this witness along with the photographs as produced, there appeared to be little resemblance. But, in my view that would not be enough to establish his identity of employment with the said Corporation at the relevant time. The evidence of the witness, on the whole, appeared to be false and very difficult to be believed, for the purpose of establishing his identity of employment with the said Corporation at the relevant time.

315. Workman WW-267 has not produced his Identity card. To establish his identity, he has produced a certificate from Bejoy Babu and stated that he knew Bejoy Babu and Bejoy Babu also knows him. But, he could not mention the address of Bejoy Babu and was not in a position to remember, what statements were contained in the certificate of Bejoy Babu. Bejoy Babu, a Commissioner from Ward No. 29 to which this witness do not belong, gave the certificate and he gave the certificate and he gave the usual story like others, that not being available to contact his Ward Commissioner, for some time, he approached Bejoy Babu, for the certificate. It was his evidence that Bejoy Babu gave him the certificate on hearing and the photograph which was annexed to the certificate of Bejoy Babu, was snapped 3 months ago. He has produced another certificate along with his photograph and LTI attested, from N. Sakar, who was not admittedly in service, when he granted the certificate on a plain paper and without the seal of the said Corporation. He could not mention the full name of this officer or the post held by him. This witness appeared to me to be intelligent. But he was not consistent and really had no document to establish the case, as sought to be made by him, now. His evidence regarding age was equally inconsistent like the other witnesses and he has said to be staying at Siliguri from 1970 to 1989. But, apart from the evidence as above, he has not produced evidence or any evidence, which are enough. He has not produced any other evidence of his stay. He has produced some Union receipts, without being able to give further particulars of them. But, even such production, according to me, would not be enough to establish his identity of employment with the said Corporation. He has produced a Permit slip which has been marked Ext. W-7/34, which according to him, was issued by Paul Babu. He has said to be working since 1970 and was terminated on 21-7-1975, but was not clear enough about the name of the 7th month. His evidence was that, he received the Identity card in 1978, with his photograph and signature of Dutta Babu and Deo Prosad. But, presently he does not possess that Card. According to him, Dutta Babu and Deo Prosad, both signed the said Card and he has said the contents of the same in his affidavit. He could not mention the date in 1978, when he was terminated. His evidence was that he signed the Payment Sheet and considered the same as such, as he was asked by the Babus, to accept payments or signing the said sheets. His evidence was, he was one of the 464 employees, as involved in the Supreme Court case. But he had no other idea. He agreed that his appearance today, has certainly changed from that of 1978. This witness had some resemblance with his present appearance and the photographs, but taking a total view of the evidence as adduced, I feel that he was absolutely tutored and wanted to improve his case, even at

the time of deposing and he does not even remember the relevant dates. As indicated earlier, his evidence regarding his age was inconsistent like others. He could not mention, what was his age either in 1985 or 1975. On his own admission regarding the change of his appearance from 1978, it cannot be held that his identity of employment with the said Corporation either at the relevant time or at any time, has been established.

316. WW-268 has not produced his Identity card. He has produced a Ration card, containing his name, his father's name and address. That card is of course a duplicate one and he has said that apart from the contents, about which has been recorded earlier, he knew nothing else of the entries and he was 44 years of age, when he received the card. But, he has not produced any evidence of such receipt, to establish his identity and stay. He has disclosed firstly, a certificate from Bejoy Dey, a Commissioner of Siliguri Municipality and has stated the photograph and LTI therein are his. It was his evidence that Bejoy Babu signed the certificate in his presence and that certificate contained his father's name and address, and apart from that, he knew nothing, about the other contents. His evidence was, he was 44 years of age, when he took the certificate from Bejoy Babu. Bejoy Babu was admittedly a Commissioner from Ward No. 29, but the witness was not a resident of that Ward and he has stated that Bejoy Babu knew him and he also knows Bejoy Babu. He further said that he told Bejoy Babu about the name of his father and he got the photograph snapped and affixed in Bejoy Babu's certificate, one year ago and he gave the said photograph to Bejoy Babu of his own and not on his asking. To establish his identity of employment, he has also produced a certificate from S. Barua, Shed Incharge and stated that the photograph and LTI therein, are his. It was his evidence that the said Sri Barua signed the certificate in his presence and Barua Sahab knew him from 1972. Sri Barua of course certified to be knowing the witness till 1974. The witness could not tell the full name of Barua Sahab and was not aware of his age, while obtaining the certificate. He further deposed that he got the photograph as affixed, snapped one year ago, from the date of snapping the photograph in Bejoy Babu's certificate and he gave the photograph to Barua Sahab of his own. But he was also not aware of the residential address of Sri Barua, but he said, he has obtained the certificate of his own and he could not deny that the said certificate was not in any form of the said Corporation or with their seal. The certificate of Sri Barua has not certainly established the workings of the witness in the said Corporation. The witness has produced three Union receipts, showing his membership of the said Union and said that they were not signed in his presence. He could not say what were the contents of the receipts and had no other evidence to establish his membership with the said Union. The production of these receipts are immaterial for the purpose of establishing his identity of employment with the said Corporation, but that may at least establish his membership only. It was his evidence that he was working in the said Corporation since 1972 and on 21-7-1975, he was terminated. But he has not been able to produce any evidence of his employment in 1972 and said he had no document to show about his termination on July 21, 1975. On being asked, he could not name the 7th month of the year. He further said that even in 1975, he got a Permit slip from Paul Sahab, which, like others, he has also lost. He was not aware of the date of the Permit slip, but said that during one month's strike the same was issued. He has also stated that the statement regarding Permit slip, he has not repeated earlier or elsewhere. He could not also produce any evidence of the loss of the Permit slip and on being asked, he could not also identify the signature of Paul Sahab, although he claimed that Paul Sahab signed the slip in his presence and he also affixed his LTI in the presence of Paul Sahab. His evidence regarding age, was discrepant like many other employees. He could not say what was his age, either in 1987 or in 1975. The witness has clear resemblance presently, with the photograph as produced with Sri Barua's certificate, by the two photographs also differed amongst themselves. In fact, as indicated, his present appearance agreed with the photograph as affixed in Barua Sahab's certificate, but he himself agreed that his present appearance has changed from that of 1975. It was his further evidence, from 1979 to 1989, he was staying at Khalpara, Siliguri, but in fact, no documentary evidence was produced to establish such fact and the Commissioner's certificate, was also silent

on that point. After considering the evidence as produced, it appeared that even though there was resemblance in his present appearance with one of the photographs as affixed, but that has not established his identity of employment, duly, for holding that he was employed with the said Corporation at the relevant time. There was also no doubt that at the time of certifying, Sri Barua was not in service and he only knew the employee concerned till 1974. There is in fact, no evidence of his workings under Sri Barua, who as stated, was not in service at the time of issuing the certificate. This employee has not asked for certificate of employment from the present officials of the said Corporation and he agreed that he got the certificate for his evidence and not for the case and was not aware, if Barua Saheb had the authority to grant such certificate or if the present officials only, have that right.

317. The Workman WW-269 has not also produced his Identity card. He has produced a Ration card, stating the same to be containing his name, father's name and LTI. He ofcourse could not say, what was his age at the time of the receipt of the Ration card, but said that at the time of deposing he was 44 years old. It was his evidence that he got the duplicate card, in exchange of earlier Ration card. To establish his identity and stay, the witness has produced a certificate from the Commissioner Shanti Chakraborty, stating that the photograph and LTI therein, are his. On being asked, he said that the certificate contains his name, father's name, photograph and the signature of Shanti Babu, whom he knew. But, he was not aware of the address of Shanti Babu. It was his evidence that the photograph as affixed, was snapped at the same time, when the other photograph as affixed, with the certificate of Barua Saheb, which will be mentioned hereinafter. It was his evidence that he did not work in 1978. He said that he got the photograph affixed to the certificate and also obtained the certificate for identification of his stay on Railway land. Shanti Babu's certificate of course, is silent on that point. To establish his identity and employment with the said Corporation, he has produced a certificate from Sudhir Kumar Barua, with his photograph annexed and LTI attested therein. He simply said that the certificate contained his name and his father's name and Shri Barua knew him till 1974. He was not aware of his age, when he received the certificate, but said he was 44 years old, when he received the certificate. His evidence was that the photograph in Sudhir Babu's certificate was snapped one and half years ago and he got the certificate, on hearing that the same would be necessary. It was his further evidence that Barua Saheb gave the certificate on hearing him and without consulting any record and apart from that certificate, he has no other document to establish his identity of employment with the said Corporation. Admittedly, Sudhir Babu was not in service, when he issued the certificate. He had retired from the said Corporation, when he issued the certificate. He said that Sudhir Babu did not ask for the photograph for the certificate, but he gave the same to him of his own. Sudhir Babu was not in service at the time of issuing the certificate and stated that he knew the workman concerned till 1974. It is very difficult to find from such statement only and the manner and Character in which the certificate has been issued, to establish the Identity of employment of the said workman with the said Corporation. He has produced 3 Union receipts, but he could not recognise the signatures of the signatories therein, and said, the receipts contained his name and the year of payment. These receipts, to my mind, are not enough to hold that he was employed with the said Corporation at the relevant time or to establish his identity of employment and they may at best establish, his membership of the said Union. It was the evidence of the witness that he received the Permit slip, issued by Paul Babu, containing his LTI and the signature of Paul Babu. He has said that he affixed his LTI in the presence of Paul Babu and Paul Babu has signed in his presence. But, there is no evidence of any loss. But, he stated that the copy of the slip was lying with the said Corporation. He has not also lodged any information to the Police or anywhere, for such loss and has not in his affidavit said, when he has lost the permit slip. In fact, the issue, receipt and loss of the Permit slip, has not been proved. He could not identify the signature of Paul Babu. It was his evidence that he was employed in the said Corporation since 1970 and in 1973, he was employed under Direct Payment System and was terminated

on 21-7-1975 and said that he did not remember the name of the 7th month. Although he has said that 1970 to 1989 he was staying in a shanty on Railway land. But, he has produced no evidence to establish such statement and the certificate of the Commissioner was also silent on that point. He could not recognise the two certificates as produced and his evidence regarding age, was discrepant all-throughout. In fact, he could not say what was his age in 1978 or in 1989 or in 1996, but said, he was 44 years, when he received the Ration card, which again was a duplicate copy. He could not recognise the signature of the signatories in his affidavit and said that his appearance at the time of deposing was the same as his earlier appearance, only which the difference that he has been reduced. This is a statement which cannot be reasonably believed. There was some resemblance of the present appearance of the witness with the photographs as produced. But, that itself, will not be enough to hold in favour of his identity of employment with the said Corporation and more particularly, it is only, but expected that his present appearance must have been changed from his earlier appearance and when he deposed to the contrary, that itself was enough to hold that he was not a truthful witness. The evidence of this witness, as recorded now, also appeared to be inconsistent with the statements as contained in the affidavit.

318. WW-270 has not produced his Identity card, but has produced a duplicate copy of his Ration card, said to be containing his name, his father's name, but in the card, there was no LTI of his. Of course, there has been an endorsement that 50 paise was paid for the duplicate card. To establish his identity, his employment and his stay at Silguri, he has produced firstly, a certificate from the Commissioner Sri Bejoy Dey, with his photograph and LTI, but he said that he was not aware of the address of Bejoy Babu and it was his evidence that Bejoy Babu's certificate contained his name, his father's name and apart from that, he could not say anything. Bejoy Babu was a Commissioner from Ward No. 29, but the witness was staying in Ward No. 4. It was his evidence that he got the photograph as affixed in his certificate, one month ago and he gave the same to Bejoy Babu, not on his asking, but of his own and he could not definitely say, what were the contents in Bejoy Babu's certificate. He has, secondly produced a certificate from Sudhir Kumar Barua, stating that the same contained his photograph & LTI, but could not say, what else were contained in the certificate. He has agreed that Barua Saheb gave the certificate on a plain paper without any seal of the said Corporation and the certificate was not received by him on the same day and he of course said that the papers were lying with Barua Saheb. It was his evidence that he obtained the certificate from Sri Barua, for his identity, but he could not identify the signature therein. Admittedly, Barua Saheb was not in service, when he gave the certificate to the workman and has said that he knew the workman, till 1974. Since Sri Barua was not in service, at the time of certifying and the manner in which the certificate was issued, so also the character and contents of the same, it is difficult to hold that such certificate could establish the identity of employment of the workman concerned with the said Corporation, at the relevant time. The witness has produced one receipt of the said Union, but for the views which I have expressed earlier and in respect of other employees, I think such receipt will not be enough, for establishing the identity of employment of the workman concerned with the said Corporation, at the relevant time. It was his evidence that he was working in the said Corporation since 1970 to 1973. He was under Direct payment system and was terminated on and from 21-7-1975. The evidence on this point is scanty and the witness could not even name the 7th month of the year, when he was terminated. He has said to have received a Permit slip from Paul Saheb, which according to him, was signed by Paul Babu in his presence and he affixed his LTI. He could not also produce any evidence of receipt or any evidence, establishing the loss of the Permit slip, which he has claimed. He said that he did not remember the writings in the Permit slip and the statements regarding Permit slip as made by him now, were not repeated by him earlier and anywhere. He could not identify the signature of Paul Saheb. He has not produced any evidence of his workings and his evidence regarding age, was discrepant like many other employees. In fact, he could not say what was his age in 1975 and said that he was 44 in 1970 and it was his further evidence that he was 46 years old, when he received the

Ration card, in 1975. He could not produce any documentary evidence regarding his residence. The photographs as produced with the two certificates differed with the appearance of the workman. Even if his present appearance, appeared to have some resemblance with the photographs, which were admittedly of very recent origin and they will not establish his identity of appearance at the time relevant to his employment. On the whole, the evidence of this witness appeared to me to be a tutored one.

319. WW-271 has not produced his Identity card and has produced two photographs, affixed with two certificates as produced, the particulars whereof will be indicated hereinafter, which photographs again, differed. He has produced his Ration Card and could not say what was his age at the time of receipt of the same, but agreed that in the Ration card, there is no LTI of his. It was his evidence that this Ration card was a duplicate one, secured by him, on deposit of his earlier 1986 Ration card. To establish his identity and say, he has produced a certificate from the Commissioner, Bejoy Dey with his photograph and LTI therein and has stated that Bejoy Babu knew him to be staying on Railway land, but, unfortunately, such statement will not appear from Bejoy Babu's certificate. He could not say of the contents of Bejoy Babu's certificate or could identify the signature therein and said that he gave the photograph to Bejoy Babu for affixing in the certificate, for his identification and his photograph was said to have been snapped four or five years ago. But, the certificate of Bejoy Babu was dated February 4, 1993. He has also annexed, a certificate from S. K. Barua, who has certified to be knowing him till 1974. It was his evidence that in the certificate, there is his photograph and LTI. The certificate was dated December 28, 1992 and he further deposed that he gave the photograph for affixation in the certificate, for identification. This photograph was snapped four or five years ago and he could not say about the writings in the certificate or could identify the signature of the maker. He has produced four Union receipts, which receipts, are in my view, would not go a long way to establish his identity of employment and they can, at best, prove his membership of the said Union. The receipts contained two Registration numbers of the said Union viz. 8218 and 8219 and there has been no explanation for such discrepancy. It is very difficult to visualize how a Registered Trade Union, can have two Registration Numbers. The witness has said that he was working in the said Corporation since 1970 and was under Direct Payment System since 1973 and was terminated on 21-7-1975 and thereafter, he was re-employed in 1978. He could not mention specifically, the dates or months, when he was so employed in 1978 and only said that such employment was for four months. He could not also name the 7th month of the year, 1975, when he was terminated and in fact, there is no evidence of such termination or his re-employment in 1978. The witness has said that in 1978, he received an Identity card, which he has lost and for that, has lodged G.D. Ext. W-7/35. The said card was signed by Dutta Babu. He has also deposed that the said Ext. W-7/35 was written by the Police. This may be possible. But he could not say who attested his LTI in the said card. It was his evidence that he was not duly aware of the contents of the Identity card. Although he has said so many words regarding the Identity card, but unfortunately, his affidavit was silent on that point. But, on being asked, he said that those statements were made to his drafting lawyer and all papers are with the said Corporation. It was his evidence that he received the Permit Slip from Paul Saheb, which contained the signature of Paul Saheb and so also his LTI. He was specific that Paul Saheb signed the Slip in his presence and he also affixed his LTI in the presence of Paul Saheb, but like many other employees, he has lost the said slip and that too, without any legal evidence. In fact, he has not filed any information to Police or to anyone, for such loss. He was not aware of the contents of the Permit slip or the writings therein. His evidence regarding his age, was discrepant all throughout and no evidence was adduced, to establish his age 44, as declared. It was his evidence that from 1970 to 1979, he was staying at Jabravita, NJP and in 1989, he was at Deshbandhu Para. But, in fact, there is no legal evidence to establish such statements. It appeared that he lost his father in 1980 and was staying on Railway land, but as stated earlier, such stay on Railway land has not been established through the certificates as produced. He could identify the signature of the signatories in the affidavit, but

could not identify the signature of Paul Saheb and, his statements regarding the pendency of the Supreme Court case or inclusion of his name there, were based on informations from the said Union. The present appearance of the witness showed no resemblance and as stated earlier, the two photographs as produced, also differed. This witness appeared to me to be not only inconsistent in his statements and deposition, but he was also a tutored one. He has not indicated the date of receipt of his Identity card in his affidavit.

320. WW-272 has not produced his Identity card. He has produced a duplicate Ration card, stating that he does not remember the date and years of the same. He has also said that he was not aware, if his LTI was there in the Ration card. Apart from stating that he was not aware of the date, when he received the same. He has produced a certificate from Sri Bejoy Dey, Commissioner, stating that his photograph and LTI was there in that certificate and Bejoy Babu knew him and about his stay in a shanty on Railway land, but there is no such corresponding statement in the certificate of Bejoy Babu, regarding the stay. He could not recognise the signature of Bejoy Babu or could say about the contents of his certificate. Bejoy Babu was a Commissioner from Ward No. 29, but the witness was not sure, if he was a Commissioner from Ward No. 28, 29 or 30 and admittedly, the witness was not a resident of that Ward and ultimately, the witness said that Bejoy Babu was the Commissioner of Ward Nos. 29 and 30. He has also produced, for establishment of his identity of employment, a certificate from D. Banerjee, who is said to be knowing him till 1975. The witness has said that the certificate of D. Banerjee, contained his photograph and LTI, but he could not identify the signature therein or say regarding the writings in the certificate. On being asked, he said that he was not aware, when the photograph in the said Sri Banerjee's certificate, was snapped, but he gave evading answer that the same was snapped earlier, but he was not aware of the date. In fact, he said that he does not remember the same. He has produced six Union receipts, but could not identify the signatures of the signatories therein or could say, about the writings or contents in those receipts. He has said to have filed a General Diary, for the loss of his Identity card, with copy to FCI and it was his evidence that he received the said Identity card in 1978, signed by CLT Dutta Babu. His evidence was that he has lost the card in 1990, but he was not aware, when the General Diary was filed by him. He has produced a xerox copy of the G.D. with his affidavit, but his statements on the point were inconsistent with his affidavit. His evidence was that he was employed since 1971 to 1975, when he was terminated and before that, in 1973, he was in Direct Payment System and in 1974, he was employed for 4 months, but he was not in a position to establish such statement, with any legal evidence, which according to him, were lying with the said Corporation. He further said that his employment with the said Corporation, will appear from the certificate of Sri Banerjee and that has been produced for establishing his workings. He denied the suggestion that he never worked for the said Corporation and he has said to have received the Permit slip, containing the signature of Paul Babu and his LTI and according to him, he gave the LTI, in the presence of Paul Saheb, who also signed in his presence. It was his evidence that he received such slip in 1975, but could not remember, the date, when he lost the same. There was no evidence of such loss. In fact, the same has not been established. He has not asked for a copy of the said slip from F.C.I., but he claimed, the same would be available with them. He could not identify the signature of Paul Babu. He said that his age in 1985 was 40 years, but, he has not produced any evidence, establishing his age 41, as declared. It was his evidence, from 1971 to 1990 and more particularly in 1979, he was at Jabravita and thereafter, at Deshbandhu Para, but there has been no appropriate evidence to that effect. In fact, Bejoy Babu's certificate is silent on that point and also on the point that he was staying on Railway land. Although the present appearance of the witness must have been changed to some extent from that of 1975, yet it would appear that there was some resemblance with the photographs as produced, which were nearer to the date of his deposition. Even then, it is very difficult to rely on the evidence of this witness, as the same was not only inconsistent, but false to a great extent and at least to the extent as made in respect of Bejoy Babu's certificate or the contents thereof and the relevant particulars of Bejoy Babu. The receipts of the Union as produced had two Registration numbers viz. 8218 and 8219,



which is very difficult to be for the same Registered Union.

321. The present appearance of WW-273 appeared to have clear resemblance with the photograph as produced, but even then, for the views as expressed hereafter it is very difficult to rely on the statements, for the purpose of establishing his identity of his employment with the said Corporation. This witness has no identity card. He has produced his Ration card, stating the same contains his name, his father's name and other entries, including his address, but he was not aware, when he received the card and had to agree that his LTI was not there in the card. In fact, excepting the Commissioner's certificate, there was no evidence regarding his stay. He has produced a certificate from the Commissioner Shanti Chakraborty, stating that in the certificate there was his photograph and LTI and the said Commissioner knew about his stay on Railway land, but unfortunately, in the certificate there is no mention about such stay. He has agreed that he received the certificate from the Commissioner, 3 days after his approach and he could not recognise the signature of the Commissioner. He has said that the photograph as affixed to the certificate was snapped 3 or 4 months ago and he has got the photograph affixed in the certificate, for his identification. He has produced another certificate from S. K. Barua. He has said to be knowing him till 1974. This Sri Barua according to him, was the Shed Incharge and has said, the certificate contained his photograph and LTI, but he could not recognise the contents of the certificate. In fact, he was not aware of those contents. It was his evidence that there was no evidence regarding his dates of working other than those mentioned in the certificate. He does not remember, if this certificate was on a plain paper or there was any seal of the said Corporation, affixed therein. But, he agreed that at the time of certifying, Sri Barua was not in service and he has not asked for any certificate of employment from the said Corporation or the present officials, but he said the papers are with the said Corporation and the photograph as affixed was given for such affixation of his own, for his identification. He has produced 3 Union receipts and said to have lost the other receipts. But in his affidavit, he has not made any categorical statement on that. He could not say about the contents of the receipts or identify the signature of the signatories therein and said that, in 1992 he paid Rs. 12 as subscription. It was his evidence about his workings in 1972 and in 1973, he was under Direct Payment System and was terminated on 21-7-1975 and thereafter, he was re-employed for four months in 1978. He has said, from the certificate of Sri Barua, it would be established that he was in service in 1978 and apart from that, there was no other evidence. On being asked, he could not mention the name of the 7th month. Really, there has been no legal evidence of the employment of this witness in the year and periods as mentioned earlier. It was his evidence that he received the Identity card in 1978, from Dutta Babu, but he has lost the same. In fact, there is no evidence of such receipt of the Identity card or the loss of the same and on being asked, he agreed that he has not asked for the copy, from the said Corporation, although according to him, the same was available with the said Corporation. His evidence was not in consistency with the statements, as made in the affidavit, regarding Identity card and other particulars and he said that he was not remembering, if he has said anything in respect of the Identity card in his affidavit or if he has informed about the said loss, to the said Corporation. According to him, he received a Permit slip from Paul Babu, which he has lost and Paul Babu signed the same and he also affixed his LTI therein. But unfortunately, there is not only any legal evidence available on this point, but he could not also identify the signature of Paul Babu and he has said that earlier, he has not repeated the statements regarding Permit slip, to anyone or anywhere. In fact, there has been no evidence of such loss of the Permit slip. He has said about the Supreme Court case, but was not remembering the source, on the basis of which, such statements were made. He was not aware of his age in 1975 or in 1989 and there is no legal evidence available, regarding his age in 1978. He agreed that his present appearance has changed from that of 1975. As I have mentioned earlier, there was clear resemblance of the present appearance of this witness with the photograph as produced, but on the basis of the statements of the witness himself, it cannot be stated or found that he had the same appearance today, as was in 1975 or at the time, relevant to this proceeding. His evidence on the whole

appeared to be inconsistent, discrepant and false. At least in 1990, this witness realised about the loss of the Identity card, but he took no steps to register or inform such loss to the anybody. He has instant due justification and proof, took the plea of the theft of his card and his statements in the affidavit on this point, were not very clear. Even the particulars, as said to have been made in the G. D. were not also clear and unambiguous. Eventhough, he said Dutta Babu signed in his presence, he could not identify his signature. He has not also appropriately informed the said Corporation about the loss of the Identity card. The evidence of this witness was not really supported duly, his statements as made in the affidavit and he tried to improve his case as made out, while deposing. He also agreed not to have lodged any protest against his termination in 1978. He really came to depose on instructions received from the said Union. In fact, the evidence of this witness, to a great extent, agreed with that of WW-272, on many points or at least on the points as indicated above.

322. WW-274 had no resemblance with the two photographs as produced and his presence appearance, even in the said two photographs, differed. He has produced a duplicate copy of the Ration card, stating that the same contained his age, but he could not say, when he received the same and said that in the card, there was no LTI of his. He has produced a certificate from the Commissioner, Bejoy Babu, stating that the same contained his photograph and LTI and Bejoy Babu gave him the certificate in 1993, on his asking, but he was not aware of the contents of the same. He has also produced a certificate from D. Banerjee, for establishing his identity of employment and said that the 2 certificates as produced, contained his photographs and LTI. He has said further that Bejoy Babu knew about his stay at the Railway land, but unfortunately, Bejoy Babu's certificate was silent on that point. This witness was also not in a position to remember the contents of Bejoy Babu's certificate and did not also remember his age, when his photograph as affixed, was snapped. He could not also duly identify the signature and contents of this certificate and agreed that the certificate was issued on his asking, on a plain paper and without the seal of the said Corporation. Apart from certificate of Bejoy Babu, there was no evidence produced, for the workings of this witness. He has produced 7 Union receipts, but was not particularly aware of the contents of them. In any event, the Union receipts, will not go a long way to establish the identity of employment of this witness with the said Corporation, but one thing is glaring, that the registration number of the said Union appeared to be 8218 and 8219 and this difference, has not been explained. It is very difficult to agree that one Registered Union will have two different Registration Numbers. The witness said that he was employed since 1971 to 1975 and in 1973, he was under Direct Payment System and after termination in 1975, he was re-employed in 1978. He could not produce any document, showing his termination either in 1978 or 1975. There has been no evidence of his employment with the said Corporation. It was his evidence that in 1978, he received an Identity card from Dutta Babu, which he has lost, but unfortunately, there is no evidence of such receipt or loss, produced. It was his evidence that he received a Permit slip signed by Paul Sahab with his LTI affixed, but he has lost the same and such loss, has not been reported. In fact, there is no evidence, establishing such loss. He said that from 1971 to 1989, he was staying at Deshbundhupara and as Railway land, without permission. There is no evidence of such stay and in fact, the Commissioner has not said anything about the same. The witness further agreed that his appearance today has changed from that of 1975. The evidence regarding his age was discrepant, allthroughout, like other employees. I have indicated earlier that there is no resemblance of the present appearance of this witness with the two photographs as produced and those two photographs, even differed amongst themselves. But, on the basis of evidence, in respect of appearance as disclosed and when admittedly, the appearance of this witness today, has certainly changed from 1975, it is really difficult to hold that he has been able to establish his identity of employment with the said Corporation at the relevant time. It should also be noted that the witness has not been able to identify the signature of Paul Sahab. One thing should be remembered that Banerjee Babu's certificate was issued, when he was not in service and the same appeared to me to be on a plain paper and without the seal of the said Corporation. The certificates of Banerjee Babu or Bejoy Babu,

identity of employment of the workman concerned at the relevant time, has been established.

324. Workman WW 276 has not also produced his Identity card, but has produced two photographs, the particulars whereof, would be indicated hereinafter and it should be noted that the colour of those photographs and the sizes, were different. He produced Union receipts, but could not identify the signatures therein or could say anything about the contents. He has produced a certificate from one Bhusan Adittya, Commissioner of Ward No. 20, with his photograph annexed and attested LTI therein. He could not say about the full name of the said Sri Adittya, but said that he knew him as card, but has produced two photographs, the particulars whereof are given in the statement. He was a Commissioner of Ward No. 20 and he obtained the certificate from him, even though, he was a resident of Ward No. 29. He has said that J. Nagore is also within Ward No. 20 and Ashoke Babu, asked him to get Bhusan Babu. He was not in a position to identify the signature on the certificate from the Commissioner concerned. About the statements made regarding Bhusan Babu now, the contents of the affidavit were inconsistent. It was his case that he was staying on Railway land, which was known to the Commissioner, but unfortunately, the Commissioner's certificate contained inconsistent statements on this point. It was his evidence that the photograph as affixed, was snapped 2-3 months ago and he got the photograph so affixed, for his identity. It is very difficult to visualise, how an illiterate person, could raise the necessity of a certificate for identification. He has also produced, for establishing his employment with the said Corporation, a certificate from S. K. Barua, who was admittedly not in service at the time of certifying and that certificate according to him, contained his photograph and LTI. But, he was not in a position to remember the contents of the certificate or has produced any further evidence, to establish his employment under the said Sri Barua. It was his case that perhaps he got the photograph as affixed, snapped 5 or 6 months ago and was not in a position to remember or say, if such statements have been contained in the affidavit. In fact, there has been no evidence to show that he worked under the said Sri Barua, who, was stated earlier, was not in service at the time of issuing the certificate. He has said that he asked for such certificate of employment from the said Corporation, but they have not given such certificate. It was his further evidence that he asked for such certificate, when he was in service and at that time Sri Barua was also in service. On being asked, why the present Certificate was taken at such late stage, the witness replied that the delay was due to the fact that earlier, such certificate was not necessary and like others, he has also said, he gave the photograph to Sri Barua of his own. While on the point, my findings as indicated in case of earlier employees, will also apply. It was his case that he was employed in 1972. In 1973, he was under Direct Payment System and was then terminated on 21-7-1975. But, he has not produced any evidence, to prove his employment from 1972 to 1975. It was his evidence that on termination, he approached the said Union but this fact, has not been stated in the affidavit. He was not in a position to name the 7th month of 1975 and said perhaps, he has made statements regarding Supreme Court case in his affidavit. It was also his case that he received the Permit slip issued by Paul Babu, but he could not say about the contents of the same and was not in a position to remember, what actual statements he has made in respect of the permit slip. He had no evidence to prove the receipt of the Permit slip and since he has lost the Permit slip, he went to the Police Station to lodge an information in the shape of a General Diary but could not meet the Officer there. But such statement has not been made by him in his affidavit. He has said to have asked for a copy of the Permit slip from the said Corporation. It was his evidence that he was staying on a Railway land, which the Ward Commissioner knew, but as indicated earlier, the certificate as issued by the Commissioner, was silent on that point. He could not identify the signature of the signatories in the affidavit and was not in a position to mention the writings in the Ration card and agreed that he paid no fees for obtaining the duplicate copy of the card, as produced. His evidence regarding his age, was inconsistent and discrepant and in fact, he could not say what was his age at the time of receiving the Ration card and also in



1975, but he agreed that the Ration card did not contain his LTI. The present appearance of this witness, and no resemblance with the photographs as produced and it appeared to me that whenever he was in any difficulty in answering, he gave evading answers. His evidence to my mind, was false and inconsistent. Although he said about the signing of the Permit slip by Paul Soheb, in his presence, he could not identify his signature. He has not also asked for the last Union receipts from the said Union.

325. WW-277 has not also produced his Identity card. He has produced his Ration card and stated that the same contained his name, father's name and he has said further, he was not in a position to remember, what else was contained therein and he was not aware of his age, when he received the said card. He said that he gave his LTI, but the same is not in the card. It is really strange, if the witness has given his LTI, why the same will not be in the xerox copy of the card. The certificate in his case, was firstly by Bejoy Babu, the Commissioner, which he has claime to be containing his LTI and photograph. He has said that the photograph as affixed, was his and Bejoy Babu knew him. It was his case that the photograph was snapped in 1972 and he gave the same to Bejoy Babu, for his identification. He has produced another certificate from S. K. Barua, who has said to be knowing him till 1974. It was his case that Sri Barua's certificate contains his photograph and LTI, but, he could not recognise the signature and this photograph was also snapped in 1972. He has not produced any evidence of his employment with the said Corporation in 1972 and has said, the records are with the said Corporation. Sri Barua's certificate was simply on a plain paper and without the seal of the said Corporation and admittedly, he was not in service, when he issued the certificate, but the witness said that he was not aware, if Sri Barua, at the time, had the authority to issue the certificate or not and he further said that he does not remember, if he has asked for such a certificate from the said Corporation. Sri Barua was not admittedly in service, when he issued the certificate and further, he had no records available with him, on the basis whereof, he could issue the certificate. The witness has produced four Union receipts the contents whereof, he could not say and he was not in a position to recognise the signatures in those. He has further said that even on searches, he could not get any other receipts, excepting those produced. It was his evidence that he was employed in 1972, in 1973 he was under Direct Payment System and was terminated on 21-7-1975 and he categorically stated that all evidence will be available with the said Corporation and he has not produced any evidence on the Direct Payment System or for other statements, as made. He ofcourse said that he has produced evidence in respect of his statements regarding his termination on 21-7-1975 and also said that papers from 1972 to 1975 will be with the said Corporation. But, those statements have not in fact been made in the affidavit. He could recognise the payment sheet as such, as the Babus and Sardars used to call them such. But all those statements have not been made by him in his affidavit. He could not name the 7th month of 1975, when he was terminated, although he claimed to be terminated on 21-7-1975. It was his evidence that Paul Saheb gave him the Permit slip, which he has lost, but he could not either remember the date of the receipt or the loss of the same. But, he said, he lost the slip 3 or 4 years ago, but this statements, he has not made in the affidavit and he has not asked for a copy of the said slip from the said Corporation. It was his evidence that he made all the statements to his drafting lawyer and persons, they are in the affidavit. He then repeated that all facts are written or noted in the affidavit. He was not aware, if the contents of Bejoy Babu's certificate, were explained to him and he was staying in a Shanty on Railway land, without any written permission from Railway. But, such statements have not been made in the affidavit. He said that the affidavit was signed by the signatories in his presence, but he could not recognise the signature of Nishinaba Babu and Gauranga Babu. This witness has said to be 22 years in 1976, but could not say on calculation, what was his age in 1986. He has said that the photographs as produced, were snapped in 1972 and such fact he has mentioned in the affidavit, which is not true. Although the present appearance of this witness, appeared to have some resemblance with

the photographs as produced, but, it appeared to me that his evidence was absolutely tutored and false. He could not recognise the signature of Paul Saheb, but according to him, Paul Saheb signed the slip in his presence. It is true that the present appearance of the witness had some resemblance with the photographs as produced, but that will not, on the basis of the evidence as produced, establish his identity of employment at the relevant time, more particularly, it is only natural that his present appearance has changed from that of 1975. On being asked by the Tribunal, the witness said that he cannot remember so much. That question had to be asked for the evasive answers given by him.

326. WW-278 has produced his Identity card, bearing No. W-1/182 and has said, to have received the same on May 5, 1978, and in the said Identity card, he said that his photograph and LTI will be available. Although he has said to have received the card on the date as mentioned, but in the affidavit, he has not made any such statement. He has said the card, to be containing the signature of Deo Prosad and Dharendra Banerjee. He has said that the photograph in the card is his, but could not remember, when the same was snapped. He has also produced the Ration card and four Union Receipts, but could not say regarding the whereabouts of the receipts for 1991 and 1992. In fact, he has said, not to be remembering, where those receipts were. It was his evidence that in the Ration card, there is no LTI of his and the date of receipt, he could not mention, but it was his evidence that he got the present duplicate copy of the Ration card, on surrender of 1986 Ration card, the receipt whereof, he does not possess. He has stated, in 1973, he was under Direct Payment System. On 21-7-1975, he was terminated and his employment was for four months in 1978. He has not produced any evidence of such employment with the said Corporation, but has said that he received payments on signing Payment Sheets. But, he was not in a position to say about the contents of those sheets or the signatures as appearing therein. In fact, he has not produced any evidence of such workings under Direct Payment System or receiving payments, on signing payment sheets. It was his case that in 1975, he received a Permit card, containing the signature of Paul Babu and his LTI. He has said, Paul Babu signed in his presence and he also affixed his LTI in his presence, but he has lost the same. He could not remember the date of receipt of the Permit slip or when he lost the same and he was not aware of the writings therein, but he said that the slip was received after the strike in 1975. But this was not supported by any evidence. He said that he was not aware of his age as recorded in the Ration card or what was his age in 1985 and he had no evidence to establish his age 45, as declared. He has said to be residing at Khalpara from 1970 to 1989, but there was no legal evidence to that effect or there was any evidence, where he is residing now. He has said to be one of the employees of 464 employees concerned and this fact, he has learnt from Deo Prosad, but, unfortunately, such statement, he has not made in his affidavit. His further evidence was that he made the statements regarding Supreme Court case, after hearing from the Union. Although he has claimed that Paul Saheb signed the Permit slip in his presence, yet he could not identify his signature. It should also be noted the dated May 5, 1978 in the Identity card, appeared to be freshly written and admittedly, he has not received or filed any certificate from the present officials of the said Corporation, regarding his employment. The present appearance of this witness appeared to have no resemblance with the photograph as produced. The statement of this witness that those who worked in 1975 were given employment in 1978, were not duly proved. He was directed to produce his original Ration card at the time of argument but he has not done so. He has not also produced any certificate of employment for the material time either from any past or present official of the said Corporation.

327. WW-279 has not produced his Identity card. But he has produced two photographs with the certificate as enclosed with the affidavit, which again differed amongst themselves. His evidence was that he was employed in 1972, in 1973, he was under Direct Pay-

ment System and was terminated on 21-7-1975, but no appropriate evidence has been produced by him. To establish such statement, it was his case that in 1975, he received a Permit slip, issued by Paul Saheb, but he has lost the same. He could not name the month in 1975, when he was terminated and it was his case that no notice was given to him, for such termination. He could not mention the full name of Paul Saheb, or had any evidence either of the receipt or loss of Permit slip. He has also produced a duplicate Ration card, claiming the same to be belonging to him, but could not remember the age, when he received the same and agreed that the Ration card did not contain his LTI and he claimed himself to be the head of the family, but there were discrepancies over such statements and his case was that, he was the eldest one of the persons, whose cards were produced, who again, were staying separate. He could not say his age in 1975 and could not also remember the date of death of his father. He has produced a certificate along with his LTI and photograph, issued by S. K. Barua, who has claimed to be knowing him till 1974. The certificate of Sri Barua was admittedly issued at a time, when he was not in service and the same was not in the form of the said Corporation or with their seal. Admittedly, Sri Barua was not in service, when he gave the certificate. This certificate again, was in a plain paper and not in the form of the said Corporation or with their seal. His evidence, that in 1975, he received a Permit slip and lost the same, has not been established by any evidence. He could not identify the signature of Paul Saheb, even though he claimed that he signed in his presence and the LTI was affixed in the presence of Paul Saheb. He has produced another certificate from Bejoy Babu, Commissioner, stating the same to contain his photograph and LTI, which photograph, he has said, was snapped one year ago. In both the cases of Bejoy Babu and Barua Babu, he has said that they did not ask for the photographs, but he gave them to those persons of his own. He has said that from 1972 to 1989, he was staying at Deshbandhupara, Siliguri, but has not remember the address of the Commissioner. He has produced 3 Union receipts and has said that he could not say the whereabouts of 1992 receipt or could identify the signatures in the receipts. He, of course identified the signatures of Gouranga Babu, Niranjan Babu in the affidavit as filed, and was candid enough to say that his appearance today, has changed from his earlier appearance. Whenever he was asked any question regarding papers and records, he deposed that they were lying with the said Corporation. His evidence was that the photograph as affixed in Barua Babu's certificate, was earlier than the other photograph in the Commissioner is certificate. This witness, as appeared, have little resemblance of his present appearance with the photographs as produced and the evidence as tendered by him, appeared to be inconsistent and tutored. As such, even though he has little resemblance as indicated, it is very difficult to hold that he has been able to establish his identity of employment with the said Corporation at the relevant time.

328. WW-280 has not produced his Identity card. He has produced a duplicate copy of the Ration card, showing payment of 0.50 paise as the charges for such copy. It was his evidence that he was 37 years old, when he received the Ration card. But, he could not say about the writings in the said card and stated that the card did not contain his LTI. There has been no evidence of the receipt of the said card. He has produced a certificate of Moni Chakraborty, Commissioner, disclosing the photograph and LTI therein, but has to agree that he was not aware of the contents of the same. He said that he could not recognise the signature in the certificate, as he was illiterate. He could not say, what was his age, when the photograph as affidavit, was snapped but he was specific that such snapping was 4 months ago from the date, when he deposed and he gave the photograph to the Commissioner, not on his asking but of his own and he denied that the certificate was prepared for this case and agreed that the same was for his identification. He has produced another certificate from S. K. Barua, stating to be containing his photograph and LTI, but had no idea about the contents of the said certificate or could produce any evidence, showing that he had worked under the said Sri Barua. He said that the certificate was in plain paper and without any seal of the said Corporation and was signed in his

presence, but he was not aware of the contents thereof and said that Barua Saheb was not in service, when he gave the certificate. The photograph as affixed, was snapped 4 years ago. While on the question of authority of Sri Barua, he could not give specific affirmative answer, but said that the certificate in question, was not prepared for this case, but the same was for his identification. It was his case that on being employed in 1972, in 1973, he worked under Direct Payment System and he worked in the said Corporation, till 1975. But he has not produced any evidence of employment and has not indicated the said fact as mentioned in his affidavit. He has further said to have received a Permit slip from Paul Saheb, containing his signature and his LTI, but he has lost the same and he could not produce any evidence for such receipt or loss, but has mentioned those facts in his affidavit. He could not identify the signature of Paul Saheb, although he said that he signed the Permit slip in his presence. He could not mention his age in 1975 or establish his age 43, as declared. It was his evidence that from 1972 to 1989, he was at Goalapatty, Siliguri. But he has not produced any evidence for such stay or the land of construction, where he was staying. He has agreed that his appearance at the time of deposing, has changed from that of 1975. He has produced 4 Union receipts, but could not say either the years of them as contained or anything about the signatures therein. This witness appeared to have some resemblance with the present appearance and the photographs as affixed, still then, it is very difficult to hold that he was employed under the said Corporation and more particularly when, at every steps, he sought to improve his case and the photographs as produced, which were of recent origin were not admittedly of the relevant time and furthermore, there has been no legal and acceptable evidence of his working under the said Corporation, at the relevant time. It appeared that by his evidence, he was trying to improve his case.

329. WW-281 has not produced his Identity card. But, to establish his stay, identification and employment, he has produced the records as indicated hereinafter. He has produced a duplicate copy of the Ration card, which he has said to have received in 1980, on deposit of his earlier card in 1987, but could not say, the contents of the card, as produced. He could not also remember his age, when he received the card and said that the card do not contain his LTI and he was not in a position to identify the signature therein. There was some writings at the back of the Ration card, but he was not aware of them. He could not produce any evidence of possession of 1987 card or could produce any evidence of receipt of the present card of 1990 on deposit of the earlier card. He has produced a certificate from the Commissioner, Bejoy Babu with his photograph and LTI affixed and attested, but could not say anything regarding the contents of the same. He was not aware of the residence of Bejoy Babu and was also not aware of his age, when the photograph as affixed, was snapped. It was his evidence that he got the certificate 3 or 4 months before deposing and he gave the photograph to Bejoy Babu, of his own. It is really difficult to consider that an illiterate person like the witness, could know, why a photograph is to be affixed with the certificate of the Commissioner. He has then, produced a certificate from Sri S. K. Barua, with his photograph and LTI, but was not in a position to say about the contents of the certificate. Admittedly, this Sri Barua was not in service when he issued the certificate and the same was issued on a plain paper and not on the pad of the said Corporation or with their seal. The witness could not identify either the contents of the certificate or the signature therein and has not produced any evidence of his workings under Sri Barua. Sri Barua like his other usual certificates, certified to be knowing the witness since 1974. It was his evidence that he drew remuneration, on affixing his LTI on Payment Sheets, but could not produce any record for the same. He said that Barua Saheb wrote the certificate in his presence and such certificate was issued not on consultation of any records. He has not asked for a copy of the Payment sheet from the said Corporation. Although he has not asked for a copy of the Payment sheet, he said they are lying with them. He was not sure, if Sri Barua had the authority to grant the certificate, since he had retired. The witness has produced 3 Union receipts and said, they contain his name, but he could not identify

the signature thereon. The receipts as produced, were with different Registered numbers viz. 8213 and 8219. It is really strange that the Registered Trade Union had two different Registered numbers. The witness has said to be appointed in 1972 and he was under Direct Payment System from 1973 to 1975 and on 21-7-1975, he was terminated, but apart from what has been stated hereinabove, there was no other evidence available, to establish his statements. He has said that in 1975, no body got Identity card and he asked for his Identity card, orally. He has said to have received a Permit slip, signed by Paul Saheb in his presence and that also contained his LTI affixed, in the presence of Paul Saheb, yet, he could not identify the signature of Paul Saheb. Like other employees, he has said to have lost the Permit slip and the date of such loss was not remembered by him. He could not say about the contents of the Permit slip or what he said regarding the same, in his affidavit. His case was of course that he lost the Permit slip during the floods, but no Diary was lodged for such loss. In fact, his affidavit is also silent regarding the cause of the loss of the said slip. It was his evidence that the affidavit as filed, was drafted after hearing him. In this way, he tried to by-pass the impact of the questions put forward by the learned Advocate on behalf of the said Corporation. His evidence regarding age, was discrepant and inconsistent like many others. He said, perhaps in 1985, he was 37 years of age, but could not remember what was his age in 1987. It was his evidence that Bejoy Babu knew about his stay at Siliguri from 1972 to 1989 and that fact, would be established from the said certificate. He further said that he was staying in a shanty on Railway land and such fact was intimated to the drafting lawyer. Bejoy Babu's certificate was silent on this point of stay of the witness in a shanty on Railway land. This witness has some resemblance presently, with the photograph as produced, but even then, it was very difficult to establish his identity of employment at the relevant time, as there was no other acceptable legal evidence available on that point. In fact, and if at all only the certificate of Sri Barua may be of some help and assistance to establish his identity of employment at the relevant time and Sri Barua's certificate cannot be relied upon on that point, for the views as indicated.

330. The employee WW-282 has not produced his Identity card and he has produced the same type of evidence like the former workman, to establish his identity of employment and stay. It was his evidence that in 1972, he was employed and in 1973, he was under Direct Payment System and was terminated on 21-7-1975. There is no evidence either of his employment in 1972 or in 1973 and he claimed that the records are lying with the said Corporation. It was his evidence that the Payment Sheets are with the said Corporation and such fact was told to his learned Advocate, but strangely enough, such fact was not available in his affidavit. He has of course agreed that he has not asked for the Payment Sheets from the said Corporation. Like others, he has said to have received in 1975, the Permit slip from Paul Saheb. As usual, he has said, the Permit slip was signed in his presence by Paul Saheb and he affixed his LTI in presence of that officer. But, he has lost the receipt of the Permit slip or the loss of the same said slip. There has been no evidence produced either of the receipt of the Permit slip or the loss of the same and although he has said to have informed to his lawyer, such statements have not been incorporated in the affidavit. He could not say about the writings in the Permit slip and was not in a position also to identify the signature of Paul Saheb. He has produced his duplicate copy of the Ration card and said, not to be aware of his age, when he received the Ration card. It was his evidence that from the Commissioner, Bejoy Babu, he got a certificate, where his photograph is affixed and LTI available. The said certificate contained his name, his father's name and apart from that, he knew nothing. This certificate was a typed one and the witness said, the typing was done in his presence. It was his deposition that the Commissioner, only asked his father's name and he could not recognise his signature therein. He could not also say, when the photograph was affixed, was snapped and he was categorical that he gave the photograph for such affixation, of his own. The witness has produced a certificate from S. K. Barua, who has stated to be knowing him till 1974. This is the usual type of certi-

cate issued by Sri Barua, in all the cases. It was his evidence that the certificate of Sri Barua contained his LTI and photograph and that photograph was snapped little over one year, but he could not say what was his age, when the photograph was snapped. In fact, he said that he did not remember his age at that time. He was not aware of the contents of the certificate and according to him, he got the certificate for his identity. It is very difficult to visualise that such an illiterate person like the witness, will be knowing the necessity of affixing a photograph with the certificate, which he has produced, for identification. Admittedly, Sri Barua was not in service when he gave the certificate and the witness said, he does not remember what were the contents of the same or what he told on this point, to his drafting lawyer. He could not also say, if any papers were looked into by Sri Barua, before issuing the certificate. Apart from the certificate no other evidence, regarding his workings, has been produced and the witness agreed that the certificate was not in any form of the said Corporation, but the same was on a plain paper and without the seal of the said Corporation. The witness has produced 5 Union receipts, which according to him, were not prepared for the purpose of this case. But, could not recognise the signatures therein. He has said that some co-workers got the Identity card in 1978, but since he did not get that card, he has produced the certificate as above. But, this fact has not been stated in the affidavit. He has admitted to be not in service in 1978 and was also not in a position to prove the fact that those who were in service in 1975, were given employment in 1978, although he has said so. He tried to evade all questions by saying that all papers are lying with the said Corporation. While on the question of Union receipts, the witness could not answer, if he has received such receipts for 1990 or 1992. Here also, the Union receipts contained 2 numbers as 8218 and 8219 and my observations on this point, as made in the case of WW-280 and 281, will apply. It was his further evidence that he was one of the 464 employees, which fact, he has said in his affidavit and apart from that, he remembered nothing. Although he has said, as indicated earlier, the papers are with the said Corporation, yet he did not ask for production of any such paper from them. The statements made by him, regarding the 464 employees and the case as filed, were really made on the basis of hearsay. He could not say about his age in 1975 or in 1972 and same was his answer, in respect of 1986, 1987 to 1989. In fact, his age as declared, has not been established through any legal evidence. On reading the evidence and the statements as made, it appeared that while deposing, the witness sought to make improvements of his case. He had of course some resemblance presently, with the 2 photographs as produced. But, that in my view, will not be enough to establish his identity of employment at the relevant time and more particularly when, it is only expected that his present appearance has changed from that of 1975. His case was that from 1972 to 1989, he was staying at Deshbhandhu Para, Siliguri and in a shanty on a Railway land, which fact was known to the Commissioner, but there was no evidence on this aspect or on any account.

331. The workman WW-283 has not also produced his Identity card and has produced his duplicate Ration card, stating the same to contain his name and father's name and he has said to have received the card, in exchange of his earlier card, but the date of such receipt was not known to him. He could not say about his age either in 1986 or in 1987 and said, not to be remembering his age, when he received the Ration card, which again did not contain his LTI and he has only said to have received the card in 1990. He has also produced the certificate from the Commissioner, Bejoy Babu, said to be containing his photograph and LTI. He could not say, whether he told about his photograph and LTI to his lawyer and has said further that the certificate was written in his presence, yet, he could not identify the signature of Bejoy Babu. It was his evidence that he was 48 years of age, when the photograph was snapped and the same according to him, was snapped about one year ago. He has also produced a certificate from S. K. Barua. As usual he said to be knowing him till 1974 and it was his evidence that this certificate also contained his photograph and LTI, but, he could not say about the contents of the certificate, which was drafted in his presence and according to him, the certificate was drafted 3 months ago. He has said that the photo-

graph was affixed for his identification and the same was snapped one year ago and he gave the same for attestation, of his own. He could not produce any evidence of employment or working in the said Corporation in 1975 or 1978. It was his evidence that he was employed in 1970 and in 1973, he was under Direct Payment System and on 21-7-1975, he was terminated, apart from that, he could remember nothing or could tender any evidence to establish his case. He has said to have received a Permit slip from Paul Saheb, who signed in his presence and he affixed his LTI in the presence of Paul Saheb but he has said to have lost the said slip and a copy whereof was lying with the said Corporation. He could not identify the signature of Paul Saheb. For such loss of the Permit slip, he has not produced any evidence. It was his evidence that from 1970 to 1973, he was staying at Siliguri and apart from that, there was no legal evidence on that point. He declared his age 48, as given, on guess and it was his evidence that he drew his remuneration, on signing on Payment Sheets and they were considered by him to be so, as on the asking of the Babus of the said Corporation, he used to draw remuneration, on affixing his LTI. He has said about the Supreme Court case, on hearing in 1990 his witness has presently little resemblance with the photograph as produced, but even such resemblance, for the views as indicated for the earlier employer, will not be enough to establish his identity of employment with the said Corporation for the relevant period. On the whole, this witness appeared to me, to be a tutored one.

332. WW-284 has not produced his Identity card and has produced a duplicate copy of Ration card, indicating 50 paise was paid for that card. It was his evidence that he received this card in exchange of his earlier 1987 card, but there is no evidence to that effect. It was his evidence that the card contained his name and his father's name and there is no LTI and he got the card in 1993. He has produced a certificate from the Commissioner, Sri R. K. Agarwal said to be containing his photograph and LTI, but could not say about the contents of the same or the signature therein. He did not remember his age when the photograph as affixed, was snapped, but he said the photograph was snapped 3 or 4 months ago and he got the same affixed for his identification. I have the same reservations against these sayings, like the other earlier employees. He has also produced a certificate from Sri S. K. Barua, who has said to be knowing him till 1974 and he has said that this certificate contains his photograph and LTI and he could not say about the contents of the same or could identify the signature therein. He was not aware, what was his age, when the photograph as affixed according to him 6 months ago, was snapped, but he agreed that his appearance today has changed from his earlier appearance. He has said to have got the photograph affixed to the certificate on hearing about its necessity, but there is no other evidence on this point. Admittedly, this Sri Barua was not in service when he issued the certificate on a plain paper and not of any form of the said Corporation or with the seal and at the time, when he got the certificate from Sri Barua, there was no one else with him. He learnt the requirement for such a photograph from the leaders of the Union and according to him, he got the certificate 6 months ago. He has produced 5 Union receipts, but could neither say about the contents of them or could identify the signature therein. He could not say, if he got the receipt for 1992 or 1990 and also 1985. His evidence was but that, he was working in the said Corporation in 1973, he was under Direct Payment System and on 21-7-1975, he was terminated. He did not remember his age in 1970 or in 1976 and he could not name the 7th month of 1975 although he claimed to have been terminated on 21-7-1975. It was his evidence that he received a Permit slip, which he has lost, from Paul Saheb in 1975, but has not produced any evidence of such loss. He has not been able to produce any evidence about the date of the Permit slip and said, he has not asked for a copy of the said slip from the said Corporation or has informed them about such loss in writing. According to him, Gauranga Babu drafted the affidavit as filed, after hearing him and he has not repeated the statement regarding Permit slip earlier or elsewhere. He could not produce any evidence establishing his workings under Barua Saheb earlier. For the loss of the Permit slip as stated earlier and asking for information from the said Corporation, the witness

has said, he has not made any such representation. His case regarding the Supreme Court case was on the basis of hearing from the said Union. He has also said to have worked under a Contractor in 1970, for some time. It was his evidence that 1970 to 1989, he was staying at Khalpari, in a shanty on Railway land, but apart from such statement, there was no appropriate evidence and the Commissioner's certificate was silent on that point. He has rightly agreed that his appearance on the date of deposit has changed from 1975. The present appearance of this witness, has no resemblance with the photographs as filed and as such, on that basis, it cannot be found that identity of employment of this witness with the said Corporation at the relevant time, has been established. The witness could not identify the signature of Paul Saheb.

333. WW-285 has not produced his Identity card, apart from producing two photographs with the two certificates as indicated hereafter, which again differed amongst themselves, he produced a Ration card, the contents whereof were not known to him. He could not also say about his age, as recorded in that card or when he received the same. He has produced a certificate from the Commissioner, Sri Bejoy Dey, with his photograph and LTI, but could not say about the age when he got the certificate and when the photograph was snapped. He has of course stated, the certificate was typed in his presence, but he was not aware of the contents thereof. He could not identify the signature of Bejoy Babu or could say his full name. On being asked, he said that he got the certificate with the photograph affixed, for his identification. He has further produced certificate from Sri S. K. Barua, who as usual, said to be knowing him till 1974. It was his evidence that the certificate contained his photograph and LTI and age and this photograph, he has said, was snapped 4 or 5 months ago. He could not say about the contents of the certificate or the signature therein, but agreed that the certificate was on a plain paper and not in any form of the said Corporation or with their seal. He has not been able to produce any evidence showing his workings under Sri Barua. He said that Sri Barua gave him the certificate, on his asking and on hearing him. He also agreed that at the time of issuing the certificate, Sri Barua was not in service. He also deposed that he knew about the requirement of the certificate with the photograph, on being told by the said Union. He has further produced 3 Union receipts stating that they contained the number, but he was not in a position to identify the signatures therein. Apart from the Union receipts, he could not produce any other evidence showing that in 1972, he was employed, in 1973 he was under Direct Payment System and was terminated on 21-7-1975 and thereafter, he was re-employed for four months in 1978. Of course he has not been able to produce any evidence, supporting the above statements and said that all that records were lying with the said Corporation. He has further said that Payment sheets, are also with the said Corporation. He has deposed that he received a Permit slip, containing his LTI from Paul Saheb, which he has lost. Although he said that Paul Saheb signed the permit slip in his presence and he affixed his LTI in the presence of Paul Saheb, yet, he could not identify the signature of Paul Saheb. At places, he has mentioned the Permit slip as Gate Pass. But he has agreed, not to remembering if he has made such statements in his affidavit. He could not produce any evidence of such loss of the Permit slip as claimed. His evidence regarding age, was discrepant like many other witnesses and he agreed that his appearance on the date of deposition, has changed from that of 1975. It was his evidence that he was one of the employees concerned in the Supreme Court order and such statements were made, on the basis of hearing. He has said that he narrated all statements to his drafting Lawyer, who prepared the affidavit, on hearing him, but he does not remember what statements have been made in the affidavit which was affirmed 5 or 6 days ago. He has deposed, to be staying at Siliguri from 1972 to 1989, but there is no evidence to establish that or that he was staying in a shanty on Railway land as claimed. As stated earlier, the two photographs differed amongst themselves and the present appearance of this witness, according to me, had no resemblance and as such, it is very difficult to hold that on the basis of these two photographs, more particularly, when his appearance has admittedly changed from

that of 1975, he was employed with the said Corporation at the relevant time. It was his case that he received an Identity card, which he has lost. There was no evidence of such loss or the date when he received such record. On consideration of the evidence as a whole, it appeared to me that he has not only deposed falsely, but he was a tutored witness.

334. WW-286 has not also produced his Identity card and has produced, as usual, a duplicate copy of Ration Card, writings whereof, were not known to him. He has further produced a certificate from Goutam Deb, Commissioner Ward No. 17 of the Siliguri Municipality, who has stated to be knowing him since a long time, but has not mentioned about such time. The witness has said that the certificate contained his photograph and LTI and he identified the signature of the Commissioner. But, he did not remember, the address of the said Commissioner and has said that the Commissioner knew his name. He has further produced a certificate from Sri S. K. Barua, with his photograph and LTI and said that the said certificate, further contained his father's name and could not say what else was contained in that certificate. He agreed that at the time of certifying, Sri Barua was not in service and he indicated further that he got the certificate 8 months ago and the same was written in his presence, but he could not say about the contents of the same. He agreed that the certificate was on a plain paper and without the seal of the said Corporation and further stated that he got the photograph snapped 8 months ago and he gave the photograph, for such attestation, of his own. He could not say, if the certificate was written on consultation of records or any documents. While on the question of the certificate of the Commissioner, he further stated that the same was typed in his presence and the Commissioner, who was from Ward No. 17, knew about his stay. Although he was staying in Ward No. 8, it was his evidence that he obtained the certificate from the said Commissioner, as he knew him, but such fact, he has not stated in his affidavit. He further stated that he gave the photograph for affixation of his own and not on the asking of the Commissioner. Sri Barua, as usual has stated to be knowing the witness till 1974. The witness has produced 2 Union receipts, stating that they contained his name and address. Apart from the subscription as paid, he could not identify the signatures in the Union receipts. Apart from the 2 receipts, he has said that other receipts, including that of 1991, have been lost. On being asked about the other Union receipts, he said that since they were small papers, he has lost them. It was his evidence that he was employed in the said Corporation in 1972, in 1973, he was under Direct Payment System, but he could not produce any evidence on any of such account. It was his evidence that he received remuneration on signing Payment sheets and he could consider those documents, as Payment Sheets, as he used to draw remunerations, on signing them. He has further said that these facts have been stated in his affidavit. He has further said that although the Payment sheets are lying with the said Corporation, he has not asked for the copy and perhaps the said Union has asked for them. Although he said that he was terminated on 21-7-1975, but he could not remember the name of the 7th month. In fact, no evidence of such termination has been produced. He has said to have received a Permit slip from Paul Saheb in 1975, which was signed by him in his presence and he affixed his LTI in the presence of Paul Saheb, but he has lost the same. He identified the signature of Paul Saheb in Ext. M-7, which did not actually tally with the supposed admitted signature of Paul Saheb. For the loss of the Permit slip, he has admitted, not to have lodged any General Diary and he was not actually aware of the date of the said slip. He has not asked for a copy of the same. But according to him, the said Union has done so and which fact, he has said in the affidavit. It was his case that Payment sheets contained his name and they were lying with the said Corporation and he was one of the 464 employees, as involved and he was a member of the said Union, for a long time. He has said that his Advocate and Deo Prasad Paswan told him about the said 464 employees and his claim was to get benefits in terms of the Supreme Court case. This witness, in my view, has presently, little resemblance with the photograph as produced, but he himself has agreed that his appearance on the date of

deposing has certainly changed from that of 1975. His case was that, from 1972 to 1989, he was staying at Deshbandhu Para and to establish that, he has also relied on the Ration card, but unfortunately, no legal evidence or evidence as required, has been produced, in respect of such stay on the Government land as claimed and he has not mentioned about such stay in his affidavit. Even his little resemblance as appeared, in my view, will not be enough to establish his appearance in 1975, on his own saying, apart from what has been indicated and no other cogent legal evidence available. It is thus very difficult to hold that he has been able to establish his identity of employment with the said Corporation. On the whole, his evidence appeared to be false and tendered for improving the case, by filling up the gaps.

335. WW-287 has produced his duplicate Ration card, said to be containing his name, father's name and address and that card also showed, an endorsement of .50 paise, necessary for a duplicate copy. It was his evidence that he was in Shanti Nagar 8 years ago and he received the duplicate card in 1991, but he could not say what was his age at that time. The card did not contain his signature and there was also no evidence that he possessed a card in 1987, on deposit whereof, he has got the present duplicate copy. Although there has been such an endorsement of .50 paise on the Ration card, yet he testified that he has not paid any amount for the same. He has produced a certificate from Gram Panchayat, stating that the photograph and signature therein are his, but was not aware of the contents of the same. Firstly, he said that he paid Panchayat Tax, then rectified, stating that his father has paid such tax, but the amount was not known to him or he could say about the same. He was not aware of the name of the Gram Panchayat or the whereabouts of Panchayat Office, but said, the certificate was issued after hearing him and he was 38 years of age, while the photograph therein affixed was snapped. He has produced a certificate from Sri S. K. Barua, who as usual, has stated to be knowing him till 1974. It was his further case that he got the certificate from Gram Panchayat, for his identification and the certificate from Sri Barua was for that purpose, as Sri Barua knew him, since he worked under him. It was his evidence that Sri Barua did not explain to him the contents of his certificate, but the same was obtained regarding his employment and the photograph in Sri Barua's certificate was snapped one and half years ago. He obtained the certificate for his identification and never before, he visited the said Sri Barua and according to him, the certificate was obtained from Sri Barua, even at such late stage, as presently, he thought the same will be necessary for his purpose. As usual, the said certificate was in a plain paper and not in any form of the said Corporation or with their seal, but he said that the certificate was written by Sri Barua, on hearing him. In fact, he has said that this is the only certificate he has taken from Sri Barua and he has not asked for any certificate of employment from the said Corporation and he did not remember the contents of the same, but he claimed that the records of his employment will be with the said Corporation. His evidence regarding his age, was absolutely discrepant like others. He has produced another certificate from Animesh Ghosh, who according to him, was Depot Incharge, but he could not say about the contents of the same. He claimed to be in Direct Payment System. This certificate, as would appear, did not contain his photograph or his signature and it was mentioned that he was employed as a casual

labour. He has categorically stated that said Sri Ghosh was Depot. Incharge, but that act, will not appear from the certificate as produced. It was his evidence that in 1971, he joined the said Corporation and in 1973, he was under Direct Payment System and used to draw, on signing Payment sheets and was terminated on 21-7-1975 and thereafter, in 1978, he was re-employed for 4 months. Such statements and also his statement that he worked under Barua Saheb, were without any legal evidence and there was also no evidence regarding his workings under Direct Payment System. In fact, he did not actually remember the relevant facts and could not establish about his workings, as claimed. It was his evidence that papers regarding his workings under Direct Payment System, will be with the said Corporation, but he has not asked for production of them. Although he has said that he was terminated on 21-7-1975, but there was no evidence that he could remember the name of the 7th month or if he raised any protest after such termination or to establish his employment for 4 months in 1978, as claimed. It was his evidence that he received an Identity card in 1978, under the signature of Dutta Babu and that card contained his photograph, but he has lost the said card and has informed such fact to the said Union 8 years ago. He could not remember the date of his re-employment for 4 months in 1978 and in fact, he has not mentioned that in his affidavit and he has said categorically that such evidence has been produced before this Tribunal. It was his evidence that though he worked in 1975, but got employment in 1978 and he has produced such evidence with the affidavit and on being asked, he could not say, if those statements are available in the affidavit and he was also not in a position to produce any such evidence. As usual, his case was that, he received a Permit slip from Saheb in 1975, which contained the signature of Paul Saheb and his LTI, execution whereof, was made in the presence of each other, but he has lost the said copy. It was his evidence that one copy of the said slip must be with the said Corporation. Even inspite of this evidence, he could not identify the signature of Paul Saheb. It was his further evidence that he considered the relevant sheet as Payment Sheet, on hearing from the Babus and he has said, such fact in the affidavit, which according to me, he has not. He has produced one Union receipt of 1992, but could not say the contents of the same or recognise the signatures therein. This witness had some resemblance presently, with the photographs as produced, which again differed amongst themselves, both in colour and dress. Even such some resemblance with the photographs as produced, in my view, will not be enough to hold that he had the same appearance at the relevant time and more particularly when, his appearance today, was likely to be changed from that of 1975. This witness appeared to be not only making false and inconsistent statements, but he according to me, was absolutely tutored. He has not produced his Identity card. Without any due and legal evidence, the witness has said to have paid Panchayat Tax, for his stay.

336. WW-288, apart from other evidence, has produced two photographs, the particulars whereof, will be indicated hereinafter and which photographs, to a great extent differed amongst themselves. He has not produced his Identity card, but has produced a duplicate copy of the Ration card, claiming the same to be his, he has produced a certificate from Shanti Chakraborty, Commissioner, stating that Sri Chakraborty knew him and he also knows him. In the certificate, he has said that his photograph and LTI will be available. He could not say about the contents of the certificate or identify the signature over the photograph. He has said to have received the certificate on August 5, 1993, from the residence of the Commissioner, who as stated earlier, knew him and he said that he was 52 years old, when he got the photograph, snapped, which was 9 and half years ago from the date of his deposition. He has got the certificate for his proof and not for this case and according to him, he gave the photograph to the Commissioner of his own and not on his asking. He has produced another certificate from Sri S. K. Barua, who as usual like others, has said to be knowing him till 1974. According to the witness, the said Sri Barua knew him and he knows him and the photograph and LTI in the certificate are his. It was his further evidence that Barua Saheb was Shed Incharge and he knew him and he was in service and the photograph as affixed, was snapped

8 months ago and he got the certificate for his proof. On being asked, why the certificate was asked for in 1991 and not in 1975 or earlier, the witness said that he went to Barua Saheb, who knew him, but was not aware of his father's name and got the certificate, as he knew him. He could not produce any document, apart from the certificate, regarding his workings, but he agreed that the certificate was not in the form of the said Corporation or with their seal and he could not say the reason why, the certificate was issued in that manner, but he agreed that Barua Saheb was not in service at the time of certifying and he could not say, if Barua Saheb had the papers with him. Although he has said, so many things regarding Barua Saheb's certificate, but his affidavit, to a great extent, was silent on those statements. He produced 2 Union receipts, contents whereof he could not say or could recognise the signatures of the signatories therein. It was his evidence that in 1972, he entered the services and in 1975, he was under Direct Payment System and was terminated on 21-7-1975, but he could not produce any evidence about such employment since 1972 and he could mention the 7th month of 1975, as July. There was actually no document of such termination or any evidence that on such termination, any protest was lodged. He has said that he has received a Permit slip, while in service, from Paul Saheb, which contained the signature of Paul Saheb and his LTI, but he has lost the Permit slip long time ago and could not remember exactly, about the time of such loss. He said that he got the Permit slip, after strike, but has not produced any evidence of such strike or the receipt of the Slip. He has not produced any evidence of the loss as alleged, or could establish that he has lodged any General Diary, for such loss. He could not even mention the date of receipt of such slip. In the affidavit, he has said that he received the remuneration on affixing LTI on the Payment sheets, but he was not in a position to identify such receipt or signatures in the affidavit, although he claimed that the same was signed by the learned Advocate and Deo Prasad. He has produced a duplicate copy of the Ration card stating the same to be containing his name father's name, age and address and excepting that, he could not say anything else. He has said, he was 45 years old, when he received the card, but he was not sure of the actual date, since such receipt was issued long time ago. He admitted that in the Ration card, there is his LTI and said that pasting on the card, was made by the Supply Office. There was admittedly evidence of such pasting. He said that in 1985, his age was 43 years, but could not say his age in 1975, but has agreed that his appearance today has differed from the appearance in 1975. He has further stated that he stayed from 1972 to 1989, on Railway land at Siliguri Put, has not said such fact in his affidavit. But according to him, the Commissioner knew the same. The certificate of the Commissioner is silent on this point. As stated earlier, the 2 photographs as produced, differed to some extent and presently, the witness had some resemblance with the photographs as produced. That in my view, will not be enough to hold about his appearance in 1975, for the purpose of establishing his employment with the said Corporation at the relevant time, more particularly when, he has agreed that presently his appearance had changed from 1975. There is no other reliable evidence about the employment with the said Corporation at the relevant time. Even though, he claimed to be realising the Sheets as Payment Sheets, where, on signing, he used to draw remuneration after hearing from the Babus, in fact in his affidavit such statement is missing.

337. WW-289 has produced his Identity card, bearing No. W-1/165, which according to him, was received on May 4, 1978, with his photograph and LTI. He has said that in the Identity card, the signature of Banerjee Babu is there. But, he could not identify the same or explain the condition of the writings or that of the picture and the LTI there. He said that apart from the LTI, something more is written, but he could recognise the signature of Banerjee Babu in the Identity card, but said, the photograph therein was his. It was his evidence, that he worked in the said Corporation since 1973 and he was under Direct Payment System and was terminated on 21-7-1975 and thereafter, he was re-employed for 4 months in 1978. To establish his employment under Direct Payment System, he has relied on the Payment Sheets, but there was no evidence produced for such employment from 1975 to



1975 or he could remember the name of the 7th month of 1975. He could not also say for which 4 months in 1978, he was employed. In fact, the dates have not been remembered by him. He considered the documents as Payment Sheets, as the Babus used to ask him to receive payments or affixing his LTI therein, apart from such statement, there is no or any evidence. He has produced a duplicate copy of the Ration card, showing payment of .56 paise as charges and said that he did not draw ration on that card, but his colleagues draw the same, as they were staying together. He did not remember his age, when he received the Ration card. He agreed to have paid the charge of .50 paise as mentioned earlier. He has produced a certificate from Bejoy Babu, claiming that the photograph and LTI there, are his, but he did not know the contents of the same. There is no evidence of his stay on the land as mentioned and he could not remember the full name of Bejoy Babu, but he said, they call him Bejoy Babu. He could not say about the residential address of Bejoy Babu and also, was not aware, when the photograph as affixed was snapped, but he said, it was snapped 10 months ago and he gave the photograph to Bejoy Babu, for his identification, but he could not recognise the signature of Bejoy Babu. He has produced 2 Union receipts and has said that 1975, he received a Permit slip from Paul Sahab, who signed in his presence and he affixed his LTI in the presence of Paul Sahab, but has not produced any evidence of receipt of the said slip or could remember the contents of the same. He has said that he has lost the said slip, for which no General Diary has been lodged. In fact, there has been no evidence for such loss, produced by him. He has said that one copy, must be lying with the said Corporation. His evidence regarding age, was highly discrepant like others. He has said that he was 44 years in 1989, but could not say what was his age in 1989. He was not in a position to say about the contents of the Union receipts or to identify the signatures therein. He said that from 1972 to 1989, he was staying at Deshbandhu Para and that will be evident from the certificate of Bejoy Babu, such fact according to me, is not correct. He could not remember the year of the death of his father and it was his case that apart from the evidence in the affidavit, he has said something more, which he did not remember. He was candid enough to say that his appearance today, has changed from that of 1978. He could not identify the signature of Paul Sahab. Even the present appearance of this witness had no resemblance with the appearance in the photographs as produced and any was really employed with the said Corporation at that time, event, that would not be enough to hold that he had the same appearance at the time, relevant for this proceeding or he was really employed with the said Corporation at that time, since no legal evidence has been produced. His evidence appeared to me to be not only tutored, but also false.

338. So far this group of workmen viz WW-265 to WW-289, the submissions of Mr. Pathak, appearing for the said Corporation, may be placed under two aspects viz (1) general and (2) employee-wise.

339. While on the first aspect, he contended that the workmen concerned, were required to establish their individual identities or their identity of employments with the said Corporation, but they have failed. He claimed that in the matter of fixing identity, amongst others, age is a relevant factor to be established in case of employment but the employees here, have not only failed to prove and establish their respective age, but their evidence on the point and practically for all of them, was discrepant. He could not deny that practically all the employees were illiterate, but said in that case, they could have proved their age through any relative or other independent evidence, which they have failed.

340. On the basis of the available evidence, stay, which according to him, was not very much relevant, on the basis of the matter in issue or to be decided, yet the employees concerned, even on the basis of evidence as produced, have not been able to lead evidence regarding their actual stay. He also indicated that employment of the employees concerned in this case, have not also been duly proved. In fact, he submitted that the affidavits as filed, were really the only

evidence, but even, they have not proved and established the case of employment.

341. It was submitted by Mr. Pathak that the fact that all the employees, excepting one or two, could not mention the name of the seventh month, although they claimed to have been terminated on 21-7-1975, is enough to hold and conclude that they were duly tutored on this aspect and furthermore, the fact that they could not name the four months of 1978, when they were said to be re-employed, will further and amply testify the above submissions and that they were not speaking the truth.

342. Mr. Pathak then pointed out that the evidence of the workmen on the Supreme Court case or that they were persons within the 464 employees as involved, cannot be relied on, as they had no personal and individual knowledge, but such statements were only hearsay. Same was his submissions in respect of the acceptability of the statement regarding Payment Sheets, as the fact that those sheets were Payment Sheets, was not according to their own knowledge but they learnt about such character from the Babus of the said Corporation, who again, have not been produced or whose particulars have not been indicated.

343. While on the Permit Slips, Mr. Pathak pointed out that the cases of the workmen concerned were uniform. They have said to have received such Slips from Paul Sahab in 1975 and barring a few, everyone has either lost their Slips or could not find them out. He indicated that really, barring such statements there has really been no evidence or proof about the actual loss of the Slips and furthermore, they or most of them, as indicated earlier, have not even been able to identify the signature of Sri Paul or could say about the contents of the Slips, although claimed that the slips were Signed by Paul Sahab in their presence.

344. Then, Mr. Pathak dealt with the other documents viz Ration cards, certificates from the Commissioners of the Municipality or other authorities and the certificates obtained and produced from the erstwhile officers of the said Corporation, who were not with the said Corporation, as they have already retired. He also severely commented on the manner and character of the certificates as obtained and produced and pointed out further that none of the certificates were of the relevant time. He further pointed out that none of the certifiers have deposed in respect of the certificates or have proved them, more particularly when the employees could not testify to the contents of them or in many cases, could not even identify the signatures of the certifiers. Mr. Pathak claimed further that the Union membership receipts, as produced, could at best establish, the employees to be members of the said Union, but they will not in any way help to establish the fact of employment of the employees concerned, with the said Corporation, at the relevant time. In any even, he further submitted that those also were not duly proved, as the employees were not aware of the contents of the receipts or could recognise the signatures therein. He indicated further that even the receipts as produced were not of the relevant period.

345. On reference to the evidence of the concerned employees as recorded and indicated earlier, Mr. Pathak submitted that the evidence as adduced by them, cannot be relied upon or any decision, can be arrived at on such evidence, because of the intrinsic defects in the evidence as adduced, as such evidence, was contrary to and inconsistent with the affidavits as filed by the employees concerned and furthermore, the evidence as adduced was vague and differed materially, with the records as produced. This was the general submissions made by Mr. Pathak, on the evidence as recorded and that apart, he pointed out, while dealing with WW-265 that no legal evidence excepting some statements in the affidavit, has been produced. It was also submitted by him that the receipt of the Identity card as claimed, was not established and proved in evidence, on production of any cogent document. Regarding Permit Slip and the certificates of the ex-officers of the said Corporation, Mr. Pathak pleaded his earlier submissions, not only in the case of this employee, but also in the case of other employees, whose cases are being dealt with by me now. Regarding the Ration Card of the witness, Mr. Pathak stated that the said card was not of the

relevant period. He made similar submissions in respect of the Ration Card of the other employees, as dealt with, in this group. While on the question of the Commissioners' certificate, it was submitted by him that the said certificate has not established the actual workings of the employee concerned with the said Corporation and the same can, at best be, treated as evidence in respect of the stay of the employee at Siliguri and nothing more. It was also indicated by him that unfortunately, the Commissioner has not said anything about the actual address of the employee concerned. Similar submissions were made by Mr. Pathak, while on the case of other employees concerned and he submitted that the evidence of the employee regarding his age, was not consistent, but vague. Such submissions were also made by Mr. Pathak, in respect of the other employees.

346. WW-272 has produced a diary, being Ext. W-7/35, which he claimed to have been written by the Police, Mr. Pathak posed a point, if such writing by the Police was possible? I do not find any irregularity in the same. Apart from the specific submissions as indicated herein before, the other general submission of Mr. Pathak, as recorded in respect of WW-275, were also repeated. Then, Mr. Pathak referred to Ext. W-1/185 i.e., the Identity card in respect of WW-278 (Sri Ram Bahadur Paswan). He further made reference to the Identity Cards, bearing Nos. W-1/165 and W-1/126 and on a reference to them, indicated that it will appear clear that the permit numbers were not mentioned in all the cards and writings were different and at least, in the cases of W-1/185 and W-1/165, the Permit Card Numbers have been written in red and the LTI in Identity cards Nos. W-1/185 and W-1/165, were not with any date. He also indicated that there is no LTI in the Identity card No. W-1/126 and these Identity cards will ex-facie show that although names, at least in Ext. W-1/116 and W-1/185, were blurred, but the other writings were not blurred. On the basis of such submissions, Mr. Pathak wanted to establish that those cards were subsequently manufactured.

347. In his submissions, Mr. Das Chowdhury, appearing for the said Union, filed a Chart on September 8, 1993 and indicated that of the employees, whose cases are being dealt with now, 3 have filed their Identity Cards and the evidence shows that all the employees, who were employed in 1975, were re-employed in 1978 and 27 of the present group of employees, to establish their identities, have produced certificates from ex-officers of the said Corporation. He made a general submission that on the basis of the issue as involved, while granting approval of the action as taken by the said Corporation or otherwise, this Tribunal should not be too rigid, as the employees concerned, are admittedly poor and illiterate. He further submitted that it was not the duty of the said Union only, to establish the identity of the employees concerned, but such identities were also required to be established by the said Corporation, but they have admittedly taken a negative attitude, as a result whereof, it became very difficult for those poor and illiterate employees, to establish the identities. It was indicated further that no direct evidence was available with the workmen concerned and as such, the Tribunal should not take a negative attitude or approach. It was pointed out by Mr. Das Chowdhury, in fact, no termination notice was served on any of the employees, but they could remember the date of such termination as July 21, 1975, as there was mass termination. It was further pointed out by Mr. Das Chowdhury that the fact that majority of employees or most of them, have not been able to mention the name of the 7th month, yet they could mention the date of termination as July 21, 1975 and such fact, would be of no material consideration, in view of the facts as stated above. It was also pointed out by him that if any such notice was really served on the employees concerned, by the said Corporation, then, why they have not produced such notices or copies of them and such non-production, would certainly be enough to draw adverse presumption against the said Corporation.

348. Mr. Das Chowdhury further referred to the evidence of WW-1 and WW-4, apart from relying on the Identity cards as issued in 1978 or the Permit slips, issued on 1975 and further claimed that the certificates of ex-officers of the said Corporation, cannot be overlooked and ignored. In fact, it was pointed out that from the evidence of MWs. 1 and 4, the issue of the Identity Cards have been proved. While on

the question of identity, the supporting documents as above, were produced by the said Union in time and duly and claimed that there was no further need or necessity to bring documents or produce records, at this stage of the proceedings. Mr. Das Chowdhury made severe criticism for non-production of the documents by the said Corporation and claimed that even on the basis of the evidence of Sri S. B. Paul, as tendered on June 16, 1979, there is no doubt that due and necessary documents have been produced for entitlement of the employees, for payments. In fact, he pointed out that from Exts. M-4, 5, 6, 7 and 8, it would appear that those documents were lying with the said Corporation and they have really established the employment of the employees concerned and more particularly so, when, many of them have been able to say something in respect of identity or signature of the said Sri Paul. It was pointed by him, on August 7, 1990, the said Union made an application for production of Payment sheets and permit slips but the said Corporation has denied production of them, which was not fair and proper and would go a long way against them, for drawing adverse presumptions.

349. Like Mr. Pathak, Mr. Das Chowdhury also made specific references to the evidence of WW-266, WW-267 and WW-268 and contended that documents like Commissioner's certificates, Ration Cards and Union Receipts, although will not go a long way to establish employment of the employees concerned, but they will certainly prove that the employees concerned, were bonafide residents of Siliguri and were the members of the said Union. Such submissions of Mr. Das Chowdhury, cannot be denied. But that will not be enough in this case. He indicated further that apart from the certificates from the Commissioners of Municipality, certificates have been produced from the erstwhile officers of the said Corporation, who claimed to be knowing the employees concerned or has mentioned that they have worked under them and for that, their evidence cannot be brushed aside. It was further submitted by him that the employees concerned had no other alternative, but to obtain certificates from the said officers of the said Corporation, as, because of the strained relationship, they could not expect to get certificates, issued in their favour, by the present officials of the said Corporation and for that reasons, the employees had no other alternative, but to obtain the certificates from those officers, under whom they have worked or who knew them. I have already indicated my views in respect of these certificates and I further find that perhaps there is no reason and justification, of accepting the defence as taken, as there is no definite evidence that on necessary approach, the said Corporation has refused to grant the necessary certificate, for any reason whatsoever and further more, when, many of the employees, have testified that the records will be available with the said Corporation.

350. Mr. Das Chowdhury, of course, could not deny that the persons, who certified, be it the ex-officers of the said Corporation or the Municipal Commissioner or other authorities, were not examined, but claimed that their production was not necessary, as there was no claim by the said Corporation or any one, about the non-issue of the certificates, or the genuineness of the signatures were even denied and there was also, no denial of the fact that the signatories of the certificates, had signed the certificates, or majority of them, in the presence of the workmen concerned. It was further pointed out by him that it has not been stated anywhere that it was not known to the authorities as to when the employees concerned had worked and furthermore, the photographs of the employees concerned and have not also claimed the contents of the certificates, to be incorrect. Apart from that, it was claimed that there was no dispute about the particulars of the years, for which, the employees concerned were said to have worked in the said Corporation or under the Officers concerned, who issued the certificates and the signatures as attested in those certificates, have not also been denied or disputed. It was further pointed out that there was also no statement or claim that the employees concerned did not recognise the certificates, as filed. A general submission was made that since the employees concerned were illiterate and in some cases, they could not perhaps recognise the particular documents, but have without any doubt stated that the concerned certificates were signed in their presence and for such facts,

Mr. Das Chowdhury wanted to establish that the certificates, as produced, be it from the ex-officers of the said Corporation or the Municipal Commissioners and from any other sources, cannot be overlooked.

351. While on the Permit slips, it was further submitted by Mr. Das Chowdhury that in these group of employees, 25 Permit Slips have been produced and they would show different numbers in each Permit Slip and for that reason, genuineness of the Permit Slips, as produced, cannot be disputed or could be denied and they must be accepted as genuine. He pointed out, that the purpose of production of the Permit Slips, was for necessary identification after the strike and many employees including WW Nos. 144, 145, 155, 226, 228 and 267, have recognised and identified the signature of Paul Sahab and said, not only the said Paul Sahab signed in the Permit Slip in their presence, but they also affixed their LTIs in his presence. It was also pointed out particularly that WW-286 has specifically indicated the signature of Paul Sahab and for all these reasons, the validity, bonafide and genuineness of the Permit Slip as produced, cannot be disputed and doubted.

352. I have indicated earlier the exceptions taken by Mr. Pathak, in respect of the 3 identity cards viz., W-1/185, W-1/165 and W-1/126. Mr. Das Chowdhury could not deny that the name in W-1/185 is illegible, but he claimed that the name on the LTI is legible and that apart, there was signature of Sri Banerjee on the photograph, as affixed. In dealing with the Identity Card of Suresh Yadav W-1/165, he also very frankly confessed that the name was not legible and the other submissions of Mr. Pathak, have not been answered. Mr. Das Chowdhury's submissions in respect of W-1/126 were evasive and not appropriate.

353. As indicated earlier, while on the Identity Cards or the validity and bonafide of them, reference was made to the evidence of WW-1, Deo Prasad Paswan, as tendered on February 12, 1979 and on the question of Permit Slips, as indicated earlier, the evidence of S. B. Paul, as tendered on June 6, 1979 and also his evidence dated March 23, 1979 was referred to. I have indicated earlier, why the Identification made by some of the employees in respect of the signature of S. B. Paul cannot be relied upon and accepted. In fact, the employees of this group, barring a few, could not identify the signature of Shri Paul.

354. On a reference to the evidence of WW-267 it was pointed by Mr. Das Chowdhury that on the basis of the Identity Cards and Permit Slips, the employees were allowed to go in for work in the said Corporation and there had been no contrary evidence produced and such fact, should be considered in a manner, which will be helpful and beneficial to the employees concerned who belonged to the weaker section. It was further pointed out by him on a reference to the records and evidence as produced that the certificates issued by the Municipal Commissioners, were not mechanical and duplicate Ration Cards as produced, could be relied on or accepted, as they duly establish and contain the foto numbers of the cards and each employee has said, to have done so on their cards. Then, Mr. Das Chowdhury further submitted that it is true that the evidence of the employees in many cases were not consistent about the ages declared on the cards and that according to him, could not be of any material consideration. He also pointed out that it could not be established otherwise that the employees who deposed were not within the 464 employees, as involved in the Supreme Court case.

355. Mr. Das Chowdhury pointed out that really, in this case, affidavit evidence has to be considered, in support whereof oral evidence was tendered, while meeting the submission of Mr. Pathak in respect of WW-263 and WW-266. He pointed out that the evidence of those witnesses have not mainly differed from their affidavits. He agreed that it is true that certificate of Mr. Sarkar in respect of WW-261, has not specifically answered the necessary requirements of this case and for that, the fact, that the witness could not mention the contents of the certificate, would not be very material for our purpose. He further pointed out that in many cases, the witnesses have said about the Permit cards, which according to him, should be read as Identity cards, as it would appear from the evidence of WW-4 that the

cards were described by both the said descriptions. He further agreed that in some cases, the photographs in the Identity cards have really become defaced or badly damaged, but, that according to him, would not mean that the Identity cards were not the cards of the respective employees, who produced them. It was further submitted by him and that too on reference to the evidence of WW-260 and WW-261 that real witness were produced and any contrary allegations, should not be looked into or considered, as indicated earlier. He indicated that there has been no contrary evidence adduced, produced or proved and in that view of the matter, it was submitted that the benefits of identities, should go in favour of the employees concerned.

356. In support of his submissions, Mr. Das Chowdhury, first referred to the case of Workmen of Food Corporation of India-Vs.-Food Corporation of India (supra), a case, between the same parties to this Reference. He made a specific reference to paragraph 14 of the determination and claimed that in that view of the matter, the fact of employment of the employees here, are not only admitted, but should be presumed. This case was also cited by Mr. Das Chowdhury earlier, in connection with other employees and I have made my observations in paragraphs 41 and 208 amongst others and I think in view of such findings, no further consideration would be required or would be necessary. But, one thing is certain that even in spite of the findings in respect of employment, the Supreme Court has directed the fixation of identity of employment of the employees concerned, which they have not succeeded. Then, Mr. Das Chowdhury made a reference to the case of Gujarat Steel Tubes Limited Vs. Gujarat Steel Mazdoor Sabha, 1980 (40) F.L.R. 152 and specific reference was made by him to paragraph 141 of the report, which has recorded "whenever you are in doubt.....apply the following test. Recall the face of the poorest and the weakest man whom you may have seen and ask yourself, if steps you contemplate is going to be of any use to him", in support of his submissions, that since the poor employees or persons belonging to the weaker section, have deposed and the Tribunal has seen them, so, on such test, the benefits should be given to them. That observation may be apt, in cases where, the fact of employment with the said Corporation has been established by any cogent evidence. From my observations and discussions or evidence as indicated and also for my observations in paragraph 45 above, I think that since the act of employment of the employees concerned, with the said Corporation, at the relevant time, have not been duly established, so, the test as indicated, cannot be applied here. Then, a reference was also made to the case of Nadella Venkatkrishnan Raw Vs. State of Andhra Pradesh, AIR 1978 S.C. 480 a case under section 325 of the Penal Code. In that case, the appellant was convicted under that Section and was sentenced to 10 years R.I. and the Supreme Court has observed that in awarding punishment, need for rehumiliation and deterrence, to be kept in view and for that view, reduced the sentence to 5 years R.I., as such sentence, may be long enough for correctional treatment. For such view as expressed by the Supreme Court, it was contended that in the facts of this case, a compassionate approach should be taken, as the employees concerned have admittedly suffered long and such suffering should no longer be prolonged. The view as expressed in the above Criminal case, cannot in my view, be equated in the facts of this case of employment or non-employment and more particularly, when the Tribunal has been asked to find out their identity of employment at the relevant time, with the said Corporation.

357. Mr. Bhanja Chowdhury, who appeared for separate set of 203 employees, as will appear from my order dated September 13, 1993, took a point that at least 125 employees of this group of employees under consideration have impersonated and they were not the real employees and further, the real employees, belonged to the group of his clients. Mr. Das Chowdhury pointed out that really and if at all, the group of Mr. Bhanja Chowdhury's clients should be 202 and not 203, as the name of one Bipat Singh has been mentioned twice. It has been pointed out by Mr. Das Chowdhury that he has tendered the evidence of 287 employees and out of 14 employees, 51 have expired, so there would, in fact, remain for consideration, the cases of 123 employees. If there are 202 employees, as stated by Mr. Das Chowdhury belonging to Mr. Bhanja Chowdhury's group, then on calculation, the said Union has (464-202 employees) 262 employees

as their members. But, they have upto now tendered evidence of more than that number. It should again be remembered that admittedly, 54 employees have expired in the mean time.

358. Mr. Bhanja Chowdhury claimed that on the basis of the order of the Supreme Court dated September 21, 1990, there is need for identification of the employees and such need, is a must. He indicated that the names of 203 employees of his group, were known to the said Union, but in spite thereof, 125 employees have impersonated. He further indicated that the certificates as produced by Mr. Das Chowdhury's clients, do not relate to the material time and further, they were vague. He also submitted that Ration Cards as produced, were not of the relevant period and the certificates as granted by the ex-officers, after retirement, will have no evidential value in the facts of this case. He further claimed that there were no bona fide approaches by the employees concerned, to the said Corporation and on production of the certificates, they have not been able to establish their identity of employment with the said Corporation, which again was challenged. He further pointed out, the certificates as produced, were not also of the relevant time. He did not agree that the identity of the employees, who deposed or had produced the photographs, which again had differed in many particulars, were not challenged. In fact, he claimed that the learned Advocate, appearing for the said Corporation had all throughout challenged the identity of the employees concerned. It was further submitted by him that in the matter of identification, the rule of compassionate ground or benefit of doubt, as submitted by Mr. Das Chowdhury, will have no application. He submitted further that no reliance can be placed on Deo Prosad Paswan's evidence (WW-1), as, being the Secretary of the said Union, he was interested in the case of the employees, who have already deposed.

359. Mr. Pathak, in reply to the submissions of Mr. Das Chowdhury, claimed that the burden of proof, which rested very heavily on the workmen concerned, have not been discharged duly and as such, no Award in their favour, in respect of employment with the said Corporation, can or should be made. It was further submitted by him that even on the basis of the evidence as produced, the workmen concerned, will not also be entitled to any benefit of doubts, as there has been no semblance of right established or proved by them, in the matter of employment with the said Corporation.

360. I agree with the submissions of Mr. Das Chowdhury that the certificates issued by the Commissioners or other authorities, Ration cards and Union receipts will not be enough to establish the identity of employments of the group of employees, whose cases are now being dealt with and as such, I think no further observation will be necessary on them. Even then, while on the point in respect of Commissioner's certificates, I reiterate, amongst others, my findings in paragraphs 214, 221 and 299. While on the question of Union Receipts, in addition to the findings as returned by me, I repeat and reiterate my observations in paragraph 224 above.

361. While on the question of Identity cards, I think, for the views which I have expressed, amongst others, in paragraphs 212, 228 and 303 above, no further observation is necessary. In respect of the few identity cards, as filed for and on behalf of the employees, whose cases are being considered in this last group of employees and as produced, they cannot be relied upon or accepted as good and cogent evidence, for establishing the identity of employments of those card holders, with the said Corporation.

362. In respect of the Permit Slips as produced in these group of employees, I think my observations, as made amongst others in paragraphs 211, 223 and 301, will hold good and that being the position, no verdict in respect of the identity of employments in respect of these employees can be returned in their favour. It is strange that many of the employees claimed to have affixed their signatures in this group of cases in the presence of Paul Saheb and he signed in their presence, but, barring 2 or 3, nobody could identify the signatures of Paul Babu. Coming back to the certificates issued by the ex-officers of the said Corporation, which evidence incidentally, was the sheet anchor of the said Union, to establish the identity of employment of the employees con-

cerned, I think no reliance can be placed on them or any verdict can be returned in favour of the employees, on the basis of those certificates, as admittedly, the officers who certified, were ex-officers of the said Corporation and the language used in those certificates will have to be considered duly, which again according to me, has not appropriately established the case of employment of the employees concerned with the said Corporation at the relevant time. In addition to the above, I restate my findings on this aspect amongst others, as made in paragraphs 222 and 300 above.

363. I have indicated at the back of each affidavit, whether the present appearances of the witnesses of this group, have any resemblance with the photographs as produced and so also the character of resemblance, if any. On such findings, I think it would not be improper to note that the resemblance of the employees at the material time with their present appearance have not been duly established. It can not also be doubted, which fact again, has been indicated by many of the employees that their appearance today, have definitely changed from their appearance in 1975. This is just and possible. In addition to the above, while on the question of resemblance, I further repeat my findings amongst others in paragraphs 225 and 302.

364. In paragraph 208, I have already discussed and deal with the case of Food Corporation of India Workers Union Vs. Food Corporation of India (supra) and because of such observations as made by me, I think no further observation in respect of this group of cases, are not required to be restated further. I feel, the case of Gujarat Steel Tube Vs. Gujarat Mazdoor Sabha (Supra), will not have any appropriate application in the facts of this case and on facts, the same is distinguishable. If fact, the test as indicated therein, will have no application in this case. The next case, to which reference was made by Mr. Das Chowdhury viz. Nadala Venkata Krishna Rao Vs. State of Andhra Pradesh (Supra), which lays down that compassionate approach may be taken resort to, will not apply in this case, as such observations were made in a Criminal proceeding, where the accused was convicted and such conviction appeared to be severe, can not be applied here. Such test of compassionate approach, in my view, can not be applied with equal force, where identity of employment of the employees concerned, are required to be established and since, I have observed that they have failed in such attempt.

365. It should also be noted that the evidence of the employees concerned, in respect of their ages, were not very satisfactory and such evidence was vague and inconsistent. Even in spite of such vagueness and inconsistency, I think, they will have no material application in the facts of the present case and even if the employees concerned, had succeeded in establishing their identity of employments otherwise.

366. While considering the submissions of Mr. Das Chowdhury that this Tribunal should not take a rigid view in the facts and circumstances as stated earlier, I think the observation as made by me amongst others in paragraph 207 above, will duly answer them.

367. I further keep it on record that this Award is being made at the invitation of the parties viz. the said Corporation and the said Union and to which of course, the representative of 203 employees i.e. those who had a separate representation, objected. But, in view of my order dated September 13, 1993, I think the Award in respect of 287 workmen, can be made and while making this Award, I have also considered my findings in paragraph 228 above, in respect of WW Nos. 1, 2 and 4, in respect of the Identity cards.

368. In terms of my order dated October 15, 1993, I annex herewith, a list of employees as filed by the said Union, which will show the corresponding Serial Numbers of the workmen, who deposed, and who have been described by me with their Workman Numbers. It should also be noted that the persons, who issued the certificates, be it the Commissioners, or issued by other authorities or the ex-officers, have not come and proved their signatures.

369. It is thus held, on the basis of the observations as above, that in none of the cases, the employees have been able to establish duly, their identity of employment with

the said Corporation at the relevant time. In respect of the submissions made on the basis of the certificates issued by the Commissioner, Gram Panchayat, and other authorities, the certificates issued by the ex-officers of the said Corporation, Permit Slips and the Identity cards, I restate my earlier findings against each of them as submissions as made on them at the Bar, were general in nature.

370. This is my Award in respect of the 3 groups of employees, whose particulars have been indicated.

Dated, Calcutta,

The 5th November, 1993.

MANASH NATH ROY, Presiding Officer

ANNEXURE - I

Sl. No.	Sl. No. of 464	Witness No.
1.	4	W.W. 3
2.	5	W.W. 223
3.	7	W.W. 5
4.	8	W.W. 6
5.	9	W.W. 8
6.	10	W.W. 11
7.	13	W.W. 7
8.	14	W.W. 16
9.	15	W.W. 9
10.	16	W.W. 12
11.	17	W.W. 235
12.	19	W.W. 10
13.	20	W.W. 19
14.	23	W.W. 14
15.	24	W.W. 265
16.	25	W.W. 263
17.	26	W.W. 33
18.	28	W.W. 15
19.	30	W.W. 207
20.	33	W.W. 18
21.	35	W.W. 277
22.	36	W.W. 283
23.	39	W.W. 270
24.	41	W.W. 17
25.	42	W.W. 251
26.	43	W.W. 24
27.	44	W.W. 1
28.	45	W.W. 161
29.	46	W.W. 23
30.	47	W.W. 25
31.	49	W.W. 22
32.	51	W.W. 35
33.	52	W.W. 27
34.	53	W.W. 28
35.	54	W.W. 195
36.	55	W.W. 45
37.	56	W.W. 29
38.	57	W.W. 58
39.	59	W.W. 56
40.	62	W.W. 174
41.	64	W.W. 30
42.	65	W.W. 187
43.	67	W.W. 32
44.	69	W.W. 48
45.	71	W.W. 281
46.	72	W.W. 43
47.	73	W.W. 52
48.	75	W.W. 31
49.	76	W.W. 37
50.	77	W.W. 36
51.	78	W.W. 40
52.	79	W.W. 41

1	2	3	1	2	3
118.	180	W.W. 210	182.	279	W.W. 110
119.	183	W.W. 267	183.	280	W.W. 212
120.	184	W.W. 269	184.	282	W.W. 204
121.	185	W.W. 62	185.	283	W.W. 201
122.	187	W.W. 113	186.	285	W.W. 205
123.	189	W.W. 73	187.	286	W.W. 152
124.	191	W.W. 73	188.	287	W.W. 119
125.	192	W.W. 67	189.	288	W.W. 122
126.	193	W.W. 164	190.	289	W.W. 26
127.	194	W.W. 84	191.	291	W.W. 167
128.	196	W.W. 256	192.	292	W.W. 147
129.	200	W.W. 74	193.	294	W.W. 209
130.	201	W.W. 74	194.	296	W.W. 160
131.	202	W.W. 63	195.	297	W.W. 193
132.	203	W.W. 280	196.	300	W.W. 276
133.	204	W.W. 197	197.	302	W.W. 298
134.	206	W.W. 218	198.	203	W.W. 151
135.	207	W.W. 221	199.	305	W.W. 264
136.	208	W.W. 286	200.	305	W.W. 275
137.	211	W.W. 157	201.	406	W.W. 231
138.	213	W.W. 90	202.	307	W.W. 255
139.	214	W.W. 246	203.	309	W.W. 274
140.	216	W.W. 253	204.	311	W.W. 259
141.	217	W.W. 214	205.	31	W.W. 239
142.	218	W.W. 216	206.	313	W.W. 132
143.	219	W.W. 226	207.	315	W.W. 143
144.	221	W.W. 159	208.	315	W.W. 85
145.	222	W.W. 268	209.	316	W.W. 168
146.	223	W.W. 213	210.	317	W.W. 220
147.	224	W.W. 114	211.	319	W.W. 248
148.	225	W.W. 86	212.	3 0	W.W. 177
149.	227	W.W. 175	213.	3	W.W. 138
150.	228	W.W. 154	214.	323	W.W. 127
151.	230	W.W. 260	215.	325	W.W. 125
152.	233	W.W. 103	216.	326	W.W. 59
153.	236	W.W. 254	217.	327	W.W. 135
154.	238	W.W. 69	218.	328	W.W. 126
155.	240	W.W. 68	219.	229	W.W. 179
156.	241	W.W. 273	220.	330	W.W. 236
157.	242	W.W. 194	221.	332	W.W. 136
158.	244	W.W. 89	222.	333	W.W. 124
159.	245	W.W. 133	223.	3335	W.W. 278
160.	246	W.W. 87	224.	336	W.W. 65
161.	247	W.W. 258	225.	337	W.W. 156
162.	250	W.W. 92	226.	338	W.W. 116
163.	252	W.W. 176	227.	339	W.W. 247
164.	253	W.W. 173	228.	340	W.W. 163
165.	256	W.W. 130	229.	343	W.W. 162
166.	257	W.W. 115	230.	345	W.W. 169
167.	258	W.W. 198	231.	347	W.W. 191
168.	259	W.W. 79	232.	349	W.W. 215
169.	260	W.W. 150	233.	350	W.W. 211
170.	261	W.W. 123	234.	351	W.W. 285
171.	265	W.W. 153	235.	354	W.W. 250
172.	266	W.W. 244	236.	355	W.W. 183
173.	267	W.W. 128	237.	358	W.W. 121
174.	268	W.W. 158	238.	359	W.W. 232
175.	269	W.W. 260	239.	360	W.W. 190
176.	270	W.W. 91	240.	362	W.W. 217
177.	271	W.W. 266	241.	365	W.W. 140
178.	272	W.W. 80	242.	268	W.W. 145
179.	273	W.W. 81	243.	370	W.W. 245
180.	275	W.W. 146	244.	373	W.W. 100
181.	278	W.W. 141	245.	375	W.W. 284
			246.	376	W.W. 144
			247.	378	W.W. 20



1	2	3
248.	379	W.W. 182
249.	380	W.W. 181
250.	383	W.W. 228
251.	387	W.W. 105
252.	388	W.W. 279
253.	390	W.W. 137
254.	393	W.W. 241
255.	394	W.W. 227
256.	397	W.W. 155
257.	399	W.W. 261
258.	400	W.W. 208
259.	401	W.W. 184
260.	402	W.W. 186
261.	404	W.W. 225
262.	406	W.W. 106
263.	409	W.W. 148
264.	413	W.W. 98
265.	414	W.W. 108
266.	415	W.W. 95
267.	416	W.W. 94
268.	417	W.W. 105
269.	418	W.W. 107
270.	419	W.W. 96
271.	426	W.W. 97
272.	428	W.W. 139
273.	430	W.W. 53
274.	434	W.W. 120
275.	435	W.W. 99
276.	436	W.W. 129
277.	437	W.W. 104
278.	438	W.W. 101
279.	439	W.W. 102
280.	440	W.W. 287
281.	442	W.W. 109
282.	443	W.W. 117
283.	446	W.W. 170
284.	455	W.W. 242
285.	461	W.W. 243
286.	462	W.W. 288
287.	463	W.W. 142

नई दिल्ली, 8 फरवरी, 1994

का.आ. 642 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्तर्गण में टेलचर कोलियरी के प्रबन्धन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, भुवनेश्वर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-2-94 को प्राप्त हुआ था।

[संख्या एल-19011/7/84-डी-IV (बी)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 8th February, 1994

S.O. 642.—In pursuance of Section 17 of the Industrial

herby publishes the award of the Industrial Tribunal Bhubaneswar as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Talcher Colliery and their workmen, which was received by the Central Government on 7-2-1994.

[No. L-19011/7/84-D. IV (B)]  
RAJA LAL, Desk Officer

#### ANNEXURE

#### INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR PRESENT :

Shri R. K. Dash, LL. B.,  
Presiding Officer,  
Industrial Tribunal,  
Orissa, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 14 OF 1984

(CENTRAL)

Dated, Bhubaneswar, the 28th August, 1993.

#### BETWEEN :

The management of Talcher Colliery, P.O. Dera Colliery, Dist. Dhenkanal.

... First Party—Management.

#### AND

Their workmen represented through Talcher Coal Mines Employees' Union and Dera Colliery Labour Union.  
... Second Party—Workmen.

#### APPEARANCES :

Shri R.S. Sharma, Dy. Personnel Manager —For the First Party—Management.

(1) Shri A.K. Ray, General Secretary—For the Employees' Union

(2) None—For the Dera Colliery Labour Union.  
AWARD

The Government of India in the Ministry of Labour in exercise of powers conferred upon it by clause (d) of Section 7 (A) and sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication by this Tribunal vide their Order No. Nil, dated 4th August, 1984:—

"Whether the action of the management of Talcher Colliery, P.O. Dera Colliery, Dist. Dhenkanal in not allowing the underground piece rated loaders on duty with effect from 7 A.M. of 23-4-1984 and to introduce change of service conditions under Section 9-A of the I.D. Act arbitrarily and unilaterally in respect of underground piece-rated loaders is justified? If not, to what relief the underground piece-rated loaders are entitled?"

2. There are two unions representing the workmen in the fray; they are, Talcher Coalmines Employees' Union (for short 'Employees' Union') and Dera Colliery Labour Union (for short 'Labour Union'). Initially the Employees' Union was the only party to the proceeding. Subsequently, the Labour Union approached this Court for being added but the said prayer having been rejected it preferred a writ in O.J.C. No. 3237 of 1986 which was ultimately allowed as a consequence the Labour Union was arrayed as a party.

3. The dispute between the management and the workmen represented through the Employees' Union was that the former brought out a change in the shift timing of the underground piece-rated loaders from 23-4-1984 without complying with the statutory requirements contained in Section 9-A of the Industrial Disputes Act, 1947 (for short 'Act'). The plea of the management on the other hand is that for exigencies of service and not intending to cause any loss to the workmen the change of working hours in different shifts was effected in accordance with law. By bringing out such change, it is urged, there was no increase

in the work-load or in the working hours of the underground piece-rated loaders. Rather, it has benefited them. Previously due to non-availability of the blasted coal for about an hour or so the workers were sitting idle in each shift. So, to give them sufficient work and keeping in view the fact that the management is a public utility concern and to avoid loss of man-power the management decided to bring out change in the shift timing and ultimately gave effect to since 23-4-84. The Employees' Union in order to gain cheap popularity instigated the underground loaders to remain absent from duty and resort to strike soon after the change in shift timing was given effect to. The officials of the management approached the Loaders and appraised of them as to how the said change had benefited them but it was to of no effect.

The Labour Union which was subsequently added as a party to the proceeding filed a re-joinder supporting the case of the management and therefore, it is needless to make a narration of the same.

4. Both parties led evidence both oral and documentary and having considered the same this Tribunal answered the reference in favour of the workmen. Feeling aggrieved the management approached the Hon'ble High Court by preferring a writ in O.J.C. No. 2681 of 1992. Their Lordships after hearing the parties remanded the case back with certain observations for fresh disposal in accordance with law.

5. In the earlier award, this Tribunal on consideration of the evidence arrived at the findings as enumerated below :—

- (1) That, the change in the shift timing effected by the management is a condition of service ;
- (2) That, to bring out such change notice as envisaged in Section 9-A of the Act was required to be given ;
- (3) That, such notice was not given to the workmen represented by the Employees' Union ; and
- (4) That, the wages for the period from 23-4-1984 to 14-5-1984 not paid to the workmen be paid and the fine imposed on them be waived.

6. As would be evident from the judgment of the Hon'ble Court, it was argued on behalf of the management that it was not aware of the existence or operation of the Employees Union so far as its industry is concerned and because of this the said union was not noticed. It was also alternatively argued that in the conciliation proceeding the Employees Union since agreed to the change in the shift timing it should not be allowed to agitate the same now. Having heard the parties and on consideration of the materials, their Lordships held that the change in the shift timing being a condition of service it was necessary to notice the underground loaders as required under law. However, considering the alternative argument advanced by the management that the Employees Union in course of conciliation agreed to the change in the shift timing, the Hon'ble Court remanded the matter back for giving a finding as to if such stand taken by the management is factually correct. In this view of the matter, my finding will be confined only to the question as to whether the Employees Union accepted the change of shift timing in question before the Conciliating authority and if this is answered in affirmative then it has to be held that there existed no dispute between the parties which could have been referred to this Tribunal for adjudication.

7. After remand the management examined two witnesses whereas the workmen one. Evidence has been led through management's witness No. 1 that in course of conciliation the representative of the Employees' Union agreed that the workmen would attend to their duty as per the change of shift timing. During cross-examination the said witness, however, admitted that he did not participate in the conciliation proceeding held between the management and the Employees Union. This being his unequivocal admission his evidence in chief-examination referred to above is of no help to the management.

The next witness of the management would say that two separate conciliation proceedings were held with the management as well as the Employees Union whereupon the Regional Labour Commissioner (Central) informed the management verbally that the workmen were agreeable to the change of shift timing. This evidence being far from truth is not believable at all. It being the statutory duty and responsibility of the Conciliation authority to bring out amicable settlement of the disputes and differences between the management and the workers with a view to maintain industrial peace, the Regional Labour Commissioner (Central) in the present case would not have forced the parties to go for litigation if at all the workmen represented by the Employees Union agreed and accepted the change of conditions of service as urged by the management. This apart, when according to witness No. 2 for the management the management was not inclined to sit with the employees Union for any conciliation, it is quite unbelievable that the Employees Union which had been challenging the unilateral decision of the management, as aforesaid, suddenly accepted the change of shift timing. Furthermore, the plea taken by the management as alleged appears to be an after-thought since because such a stand has not been specifically taken in the written statement at the earliest point of time. On the contrary, its positive assertion in paragraph 10 of the written statement is that due to the adamant attitude of the union the conciliation proceeding ended in failure.

8. In view of such unequivocal admission coupled with the evidence as discussed above, I am persuaded to conclude that the Employees Union representing the workmen had not agreed to the change of shift timing brought out by the management. This being my finding, I conclude that the introduction of change of shift timing being in contravention of Section 9-A of the Act, the management's subsequent action in not allowing the underground piece-rated loaders to duty with effect from 7 A.M. of 23-4-1984 is illegal and unjustified and so they are entitled to wages for the period from 23-4-1984 to 14-5-1984 and the fine imposed on them by the management should be waived.

9. The reference is thus answered accordingly. Dictated and corrected by me.

R. K. DASH, Presiding Officer

नई दिल्ली, 7 फरवरी, 1994

का.प्र. 643 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, उसे दिनांक 1-2-94 को प्राप्त आ.एन.जी.सी. प्रबंधन के संबंध में उनके कर्मचारों और नियोक्ताओं के बीच हुए औद्योगिक विवाद के संबंध में अनुबंध में यथोक्त केन्द्रीय सरकार औद्योगिक अधिकरण, जयपुर के पंचपट को प्रकाशित करती है।

[सं. एल-30012/30/90-आई.प्रार. (विविध)]  
बी.एम. डेविड, डेस्क अधिकारी

New Delhi, the 7th February, 1994

S.O. 643.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of O.N.G.C. and their workmen, which was received by the Central Government on 1-2-1994.

[No. L-30012/30/90 IR (Misc.)]  
B. M. DAVID, Desk Officer

## केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी.आई.टी. 30/91

रैफरेंस : केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्रमांक एल-30012/30/90, आर.डी. दिनांक 4-9-1991

श्री भोमदान पुत्र श्री आईदान द्वारा राजस्थान बैंक एम्प्लॉईज यूनियन, माधोबाग, जोधपुर।

—प्रार्थी

बनाम

जनरल मैनेजर, आयल एंड गैस कमीशन, उमोद विमान गन्नाड़ा जोधपुर।

—प्रतिप्रार्थी

उपस्थित

माननीय न्यायाधीश श्री जंकर लाल जैन, आर.एच.जे.एम.

प्रार्थी की ओर से : श्री जे.एन. शाह  
 अप्रार्थी की ओर से : श्री एल.डी. चतुर्वेदी  
 दिनांक अवाड़े : दिनांक 27-11-93

अवाड़े

केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली के उपरोक्त आदेश द्वारा निम्न विवाद इस न्यायाधिकरण को वास्ते अधिनियम औद्योगिक विवाद अधिनियम 1947 जिसे, तत्पश्चात अधिनियम 1947 संबोधित किया है, प्रेषित किया गया है :

"Whether the management of Oil and Natural Gas Commission employed Shri Bhomdan S/o Shri Aidan as a labourer in their establishment in the district of Jaisalmer (Rajasthan) for the period from 6th July, 1982 to 31st March, 1987 under his own name and also under different fictitious names and also as to whether the termination of his employment w.e.f. 1st April, 1987 is just and legal? If not, to what relief is the workman concerned entitled?"

2. प्रार्थी श्रमिक श्री भोमदान ने अपना दावा अप्रार्थी तेल व गैस आयोग के विरुद्ध दिनांक 28-5-91 को इस आधार पर संस्थित किया है कि उसे विपक्षी द्वारा 6-7-82 को नौकरी पर रखा गया व उसने दिनांक 31-3-87 तक अपने स्वयं के व अन्य बढ़ते हुए नामों से 12 माह की अवधि में 240 दिवस व उससे अधिक कार्य किया और उसे दिनांक 1-4-87 से बिना किसी कारण सेवा मुक्त कर दिया गया। प्रार्थी का कथन है कि उसे कोई नोटिस, नोटिस पे अथवा फटली भुआतजा आदि नहीं दिया गया इस प्रकार धारा 25-एफ अधिनियम 1947 के प्रावधानों की अवहेलना विपक्षी संस्थान द्वारा की गई है।

3. प्रार्थी ने समस्त लाभों सहित पुन. नौकरी में बहाल किये जाने की प्रार्थना की है।

4. अप्रार्थी की ओर से वादेंतर प्रस्तुत कर प्रार्थी के दावे को पूर्णतः अस्वीकार किया गया है और यह कथन किया गया है कि प्रार्थी लगातार 12 माह में 240 दिवस कभी भी आयोग में नियोजित नहीं रहा। इसके साथ साथ अन्य बंधनिक आपत्तियां उठाते हुए अप्रार्थी ने कथन किया है कि प्रार्थी ने अनावटी नामों से एवं बढ़ते हुए नामों से जो कार्य किया है वह आपराधिक क्रम की श्रेणी में आता है।

5. प्रार्थी ने रीजोशन्स प्रस्तुत किया जिसका भी विपक्षी ने प्रत्युत्तर प्रस्तुत कर उसके संबंध में आपत्ति उठाई है।

6. वाद के समर्थन में प्रार्थी श्री भोमदान के अलावा श्री हनुमान सिंह को परीक्षित कराया गया है, प्रादेखीय सबूत में प्रदर्शक इन्फ्यू-1 लगायत इन्फ्यू-4 फोटो प्रतियां पेश की हैं। अप्रार्थी की ओर से साक्ष्य में विपक्षी संस्थान के उप निदेशक वित्त एवं लेखा श्री शांतीलाल देवर को परीक्षित किया गया है।

7. तत्पश्चात पक्षकारान के प्रतिनिधिगण की बहम विस्तारपूर्वक सूची गई पत्रावली, पत्रावली पर उपलब्ध सामग्री व माध्य तथा विधि के सुसंगत प्रावधानों का ध्यान-पूर्वक परीक्षण किया गया।

8. प्रार्थी के विद्वान प्रतिनिधि श्री जे.एल. शाह ने अपनी दलीलों के समर्थन में निम्न न्याय दृष्टान्तों का आश्रय लिया :

1. 1990 एल.एल.एन. पेज 1054 (एम.सी.) पंजाब लैंड एंड रीक्लेमेशन कॉर्पोरेशन लि. चंडीगढ़ बनाम लेबर
2. 1986 एल.एल.जे. पेज 127 (एम.सी.) रिजर्व बैंक ऑफ इंडिया।
3. 1993 लैब.आई.सी. 1135 (माननीय कर्नाटक उच्च न्यायालय) उमेश एम. नारिक बनाम दी कर्नाटक फूड एंड मिडिल सप्लायज कॉर्पोरेशन लि.।

9. अप्रार्थी के विद्वान प्रतिनिधि ने अपनी दलीलों के समर्थन में निम्न न्याय दृष्टान्त प्रस्तुत किये :

1. जे.टी. 192 (1) एम.सी. 394, दिल्ली डेक्कन-मेट हार्टीकल्चर एम्प्लॉईज यूनियन बनाम दिल्ली एडमिनिस्ट्रेशन व अन्य।
2. एफ.जे.आर. (81) 1992 पेज 107, कृष्ण मुरारी प्रसाद बनाम इलाहाबाद बैंक व अन्य माननीय पटना उच्च न्यायालय।
3. केन्द्रीय औद्योगिक न्यायाधिकरण जयपुर का अवाड़े दिनांक 1-5-89 केस नं. आई.टी. 40/87, श्री किशन सिंह पवार बनाम उप महाप्रबन्धक तेल एवं प्राकृतिक गैस आयोग राजस्थान परियोजना 4 जोधपुर व अन्य।

10. यह उल्लेखनीय है कि यह विवाद राजस्थान बैंक एम्प्लॉईज यूनियन जोधपुर द्वारा उठाया गया है किन्तु यूनियन के किसी पदाधिकारी को परीक्षित नहीं किया गया है और न ही यूनियन के किसी पदाधिकारी द्वारा दावा की प्रस्तुत किया गया है। इस मामले में सारी कार्यवाही प्रार्थी श्रमिक द्वारा स्वयं ही की गई है।

11. यह औद्योगिक विवाद न्याय निर्णय हेतु इस न्यायाधिकरण के समक्ष दिनांक 19-4-91 को प्रस्तुत किया गया है। श्रम आयुक्त के समक्ष यह विवाद उठाने के संबंध में प्रार्थी श्रमिक द्वारा कोई प्रलेख या अग्रपक्ष वार्ता प्रतिवेदन प्रस्तुत नहीं किया है।

12. प्रार्थी श्रमिक ने कथन किया है कि उसने माह जलाई 82 से दिसम्बर 82 तक सही नाम से कार्य किया था। उसका कथन यह नहीं है कि उसने अपने सही नाम से एक कलैण्डर वर्ष में 240 दिवस से अधिक कार्य विपक्षी संस्थान के अधीन किया हो।

13. प्रार्थी श्रमिक ने यह कथन किया है कि उसने वर्ष 1982 के बाद बीच-बीच में अपना नाम बदलकर अन्वल-दास, भरतसिंह, चिमसिंह, लक्ष्मणदान, अर्जुनदान, कैलाशदान रामलाल, गोविन्ददान, अरुणदान भंवरदान आदि नामों से कार्य किया है और उसका यह कथन है कि उसे दिनांक 31-3-87 को मौखिक आदेशों से सेवा मुक्त कर दिया। उसने यह भी कथन किया है उसने टाईपिस्ट का कार्य किया।

14. यह उल्लेखनीय है कि प्रार्थी श्रमिक ने नियुक्ति के संबंध में न तो कोई नियुक्ति पत्र पेश किया है और न ही सेवा में हटाने का सेवा मुक्ति आदेश पेश किया है? उसका कथन है कि उसको मस्टरोल पर श्रमिक के तौर पर नियुक्त किया गया था। यह भी उल्लेखनीय है कि श्रमिक द्वारा प्रस्तुत प्रलेखों को प्रमाणित करने के लिए किसी संबंधित व्यक्ति को माध्यम में प्रस्तुत नहीं किया गया है, न ही इनके मूल दस्तावेजात ही मांगे गये हैं। इन फोटो स्टेट प्रतियों को प्रमाणित मानने का कोई समचित आधार नहीं है। प्रार्थी श्रमिक की ओर से ऐसा कोई प्रलेखीय सक्ती पेश नहीं किया गया है जिससे यह प्रमाणित हो सके कि उसने विपक्षी के अधीन एक कलैण्डर वर्ष में 240 दिवस या उससे अधिक लगातार कार्य किया हो। यद्यपि प्रार्थी के साक्षी हनुमान सिंह को परीक्षित किया गया है किन्तु उसने भी स्पष्टतः यह कथन नहीं किया है कि उसने प्रार्थी श्रमिक को 240 दिवस या उससे अधिक विपक्षी संस्थान में कार्य करने हुए देखा हो। प्रार्थी श्रमिक ने कथन किया है कि वह दैनिक वेतन भोगी श्रमिक के रूप में मस्टरोल पर कार्य करता था। विपक्षी संस्थान के माक्षी मांगीलाल टेलर ने यह प्रमाणित किया है कि अकुशल कर्मकारों की भर्ती एम्प्लाय-मेंट एक्चेंज एक्ट 1959 के प्रावधानों के अनुसार की जाती थी तथा अस्थायी एवं अकुशल कर्मकारों की सेवा स्थाई आदेश अधिनियम के अनुसार नियमित की जाती है। ग्रामीण क्षेत्रों में जेरोजगार व अकुशल कर्मकारों की कोई कमी नहीं है, इस कारण आयोग द्वारा समय-समय पर प्रार्थी को नाम

बदलकर रखने का कोई आधार नहीं था। अग्रपक्षिक तथा बचनी कर्मकार के रूप में भी श्रमिक द्वारा एक कलैण्डर वर्ष में 240 दिवस या उससे अधिक समय विपक्षी संस्थान में कार्य किया जाना प्रमाणित नहीं हुआ है। प्रार्थी की जुबानी माक्षी का खण्डन विपक्षी के माक्षी मांगी लाल टेलर के बयानों से हुआ है जिन्होंने कथन किया है कि प्रार्थी श्रमिक द्वारा 240 दिवस कार्य करना रिकार्ड के आधार पर प्रमाणित ही नहीं है। प्रार्थी श्रमिक की ओर से कोई मस्टरोल आवि पेश नहीं कराये गये हैं। जिससे यह प्रमाणित हो सकता कि प्रार्थी श्रमिक ने वास्तव में अप्रार्थी के यहां कितनी अवधि तक कार्य किया। प्रार्थी ने दावे के साथ जो अनैकस्वर प्रस्तुत किया था, उसे प्रमाणित नहीं किया है और उसके अनुसार भी प्रार्थी श्रमिक द्वारा 240 दिन या उससे अधिक एक कलैण्डर वर्ष में विपक्षी के अधीन कार्य करना प्रमाणित नहीं होता है। प्रार्थी ने नये व बनावटी नामों से कार्य करना बताया है, इस संबंध में भी कोई गुद्ध प्रमाण प्रस्तुत नहीं किया है और अगर प्रार्थी ने छल-पूर्वक बनावटी या बदले हुए नाम से कोई कार्य किया है तो उसका लाभ वह प्राप्त करने का अधिकारी नहीं हो सकता।

15. निष्कर्ष यह है कि प्रार्थी श्रमिक का यह कथन विश्वसनीय नहीं है कि उसने विपक्षी के अधीन किसी कलैण्डर वर्ष में 240 दिवस अथवा उससे अधिक कार्य किया हो। इस प्रकार प्रार्थी अपना दावा प्रमाणित करने में सफल नहीं रहा है। अतः नथ्यों और विधि के उपरोक्त समस्त कारणों से इस निर्देश का अधिनियम निम्न प्रकार किया जाता है:

“आयल एंड नेचुरल गैस कमीशन, जिला जैसलमेर के प्रबंधन द्वारा उनके श्रमिक श्री भोमदान पुत्र श्री आईदान की सेवाएं दिनांक 1-4-87 से समाप्त किया जाना उचित एवं वैध है। श्रमिक किसी गृहस्थ व राशि का अधिकारी नहीं है।”

16. अर्थात् की प्रति केन्द्र सरकार को प्रकाशनाथ अधिनियम 1947 की धारा 17 (1) के अन्तर्गत भिजवाई जाये।

रांकर लाल जैन, पीठासीन अधिकारी

नई दिल्ली, 7 फरवरी, 1994

का. प्र. 644 - औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार, उसे दिनांक 2-2-94 को प्राप्त एवं पीठासीन प्रबंधन के संबंध में उनके कर्मकारों और निर्माताओं के बीच हुये औद्योगिक विवाद के संबंध में अनुबंध में वर्णित औद्योगिक अधिनियम हेतु सरकार के पंखाट को प्रकाशित करती है।

[म. एन-30011/17/88—डी-III-बी]

डी० ए०० डेविड, हेल्थ अधिकारी

New Delhi, the 7th February, 1994

S.O. 614.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Hindustan Petroleum Corp., Ltd. and their workmen, which was received by the Central Government on the 2-2-94.

[No. L-30011/17/88-D. III(B)]  
B. M. DAVID, Desk Officer

#### ANNEXURE

#### BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

#### PRESENT :

Sri. Y. Venkatachalam, M.A., B.L., Industrial Tribunal J  
Dated. 21st January, 1994

Industrial Dispute No. 46 of 1988

#### BETWEEN :

The President,

Hindustan Petroleum Corporation.

Limited Cafeteria Employees Union.

.. Petitioner.

#### AND

The Management of Hindustan,  
Petroleum Corporation Limited.

.. Respondent.

#### APPEARANCES :

Sri P. B. Vijaya Kumar, Advocate for the Petitioner.

M's. K. Srinivasa Murthy & G. Sudha, Advocates—for  
the Respondent.

#### AWARD

The Government of India, Ministry of Labour, by its Order No. L-30011/17/88-D.III(B) dt. 22-4-1988 referred the following dispute under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947 between the Management of Hindustan Petroleum Corporation Limited, Visakhapatnam Refinery and their workmen to this Tribunal for adjudication.

"Whether the petitioners 2 to 26 mentioned in the Writ Appeal No. 811/84 and Petitioner in W. P. No. 1901/88 (Annexure A) filed in the High Court of Andhra Pradesh, Hyderabad or who among them, should be treated as the employees of H.P.C.L. in the light of the agreement (Contract No. COR-127) dated 1-4-79 and other relevant circumstances and if they are to be treated as employees in which particular category or grade they should be fitted and to what salary they should be held entitled "

This reference was registered as Industrial Dispute No. 46 of 1988 and notices were given to both the parties.

2. The brief facts of the claim statement filed by the Petitioner-Union read as follows :—

The employees mentioned in Annexure-I of Government of India Order dt. 22-4-1988 are the employees of H.P.C.L. The employees mentioned as petitioners from 2 to 26 in W.A. No. 811/84 and W.P. No. 1901/88 (Annexure-A) are entitled for wages and other service conditions in terms of Memorandum of Settlement reached at and applicable to the workers of Canteens maintained by H.P.C.L. all over India in different regions from time to time during the period from the date of amalgamation into H.P.C.L. or their dates of appointments whichever is later. The petitioners mentioned in the schedule of reference are entitled for the difference of wages and other monetary benefits between the wages and other monetary benefits paid and the wages and other benefits entitled in terms of Agreements reached at 521 GE/94—15

between the workers of Canteens and the H.P.C.L. management from time to time from the date of amalgamation of Canteens into H.P.C.L. towards arrears of wages. In the present case the petitioners were engaged directly by the management of H.P.C.L. under contract No. COR-127 dt. 20-7-79 applicable w.e.f. 1-4-1979 (Annexure-I) Prior to 31-3-1978 the petitioners were engaged through contractors. From 1-4-1978 onwards all the petitioners were engaged directly. The terms and conditions during the period from 1-4-1978 to 31-3-1979 are vague. Though the petitioners were engaged directly by the Management without any specific terms and conditions only as a later though the signatures of the petitioners were obtained on the contract COR-127 on 20-7-1979 which is said to be effective from 1-4-1979 to circumvent the privileges and obligations entitled to the workers under Labour Laws. There was no other alternative for the petitioners except to sign the contract as they were threatened that they will not be permitted to work in the cafeteria, unless they sign the contract. The services of petitioners are continuous from the dates of their appointment in the H.P.C.L. Cafeteria. Clause No. 3 and 13 of COR-127 indicates that any new person can be admitted to join the group of workers in the canteen only after scrutiny and approval of the management i.e. H.P.C.L. Corporation. Thus the power to appoint anybody in the canteen is reserved by the Corporation. As per Clause No. 4 of the Contract COR-127 neither the Society is formed nor registered. Not even the minutes of the meeting are recorded for formation of the Association. No membership for the Association was collected. No elections were held. No bank account is opened for the so called Association. Hence the question of transferring the rights and obligations, condition of any General Body meeting, auditing of Association Accounts, the submission of annual returns to the Registrar of Societies under the provisions of any Act did not arise. No rules, regulations Bye-laws were formed. All these facts prove that there is no Association at all. Under these circumstances the only contract between the petitioners and the H.P.C.L. Management is to work in the canteen and to get remuneration for the work done under various heads like, salary, bonus, ESI, P. F. leave salary, retrenchment compensation gratuity etc. All the petitioners are working under the supervision of supervisors and officers appointed by the management of H.P.C.L. Note recorded under No. PERSIPLR dt. 23-5-83 (Annexure IV) indicates that it is the management of H.P.C.L. that decides the cadre strength and the rates of wages to be paid. Letter No. ADM[GHR] PER dt. 9-4-85 (Annexure-V) indicates that the petitioners are transferred from one spot of work to another at the discretion of the General Manager of H.P.C.L. The file note recorded in June 1983 (Annexure-VI) indicates that S/Sri B. Nageswar Rao, K. S. Rao and S. D. Reddy are in fact the Supervisors of the H.P.C.L. and their duties are assigned by the management of H.P.C.L. They are even transferred from day cafeteria to night cafeteria i.e. beyond the jurisdiction of the contract COR-127 at the discretion and orders of the management. These three employees of H.P.C.L. are termed as President, Secretary and Treasurer of Visakhapatnam Refinery Catering Employees' Association which is virtually not in existence except on a letter pad specially printed to misguide with an ulterior motive to escape from offering the legitimate remuneration, obligations and liability due to the workers of the canteen. The amount payable to the petitioners remuneration is being transferred to the personal account of Sri B. Nageswar Rao and S. D. Reddy through cheques by the management and thereafter reimbursed through Sri S. D. Reddy who is a supervisor in the Corporation under the guise of Association which is virtually not in existence. The letter dt. 17-1-80 (Annexure X) indicates that H.P.C.L. Management is having full financial control to decide whether the workers of canteen are to be paid in the shape of basic salary or grant increments or as over time or as other allowances. Though H.P.C.L. management termed the petitioners as contractor in W.A. 811/84 (Annexure VII) it is categorically admitted by the management that the petitioners are the workers in W.A. 142/88 (Annexure VIII). From the above para it is evident that the H.P.C.L. management is having (i) Full financial control, (ii) Authority to appoint new persons in canteens, (iii) control on cadre strength, (iv) Fixation of rates of wages, (v) Powers to initiate disciplinary proceedings, (vi) Administrative control, (vii) Supervisory control (viii) Power to transfer cafeteria employees from one place to another (ix), To redesignate the workers, (x) Power to determine under

what head their remuneration has to be paid, to the petitioners i.e., the employees of the cafeteria. The management of H.P.C.L. entered into agreement from time to time with the workers of canteens situated all over India on All India basis under Section 12(3) of the I.D. Act (Annexures XIV, XV and XVI). Any agreement entered into under Section 12(3) of I.D. Act will automatically apply to all the workers under its control irrespective of fact whether they are the parties to those agreement or not. All the 26 petitioners known as employees in Annexure-A of the order of reference dt. 22-4-1988 issued by the Government of India be declared as the employees of H.P.C.L. management and they shall be paid wages conferring all the privileges in accordance with settlements entered into vide Annexure XIV, XV and XVI together with arrears from the dates of their appointments or from the date of amalgamation of canteens in the Corporation whichever is later and pass orders as are deemed fit and proper.

3. The brief facts of the counter filed by the Respondent-Management read as follows :

If one looks into the contract No. COF-127 it is clear that they are contractors. As can be seen from the contract 25 persons whose names are mentioned therein have signed the agreement as contractors and for the purpose of dealing with the management regarding receipt of payment. Names of three persons are mentioned who are designated as President, Secretary and Treasurer. They are S/Shri B. Nageswar Rao, K. Satyanarayana Rao and Sri S. Diwakar Reddy. They are stated to have been elected as office bearers and the payment made to them should be treated as valid payment and all of them as treated as contractors as per the agreement. They have undertaken to do the catering contract work i.e. relating to running of the canteen. They are not employees of H.P.C.L. They are contractors for the purpose of running the canteen. It is true under Section 46 of the Factories Act, it is incumbent on every Management of a factory to have a Canteen provided, they have the specified number of workmen working in the establishment otherwise there is no necessity to have a Canteen. The canteen facility in the erstwhile Caltex Oil Refining (India) Limited, Visakhapatnam was provided in 1957 for catering to its employees. The canteen was first run by a Contractor, the Ritz Hotel, Hyderabad. Subsequently the contract was awarded to various contractors for the running the canteen. It is important to state here that the erstwhile Caltex Oil Refining (India) Limited, Visakhapatnam or the Hindustan Petroleum Corporation Limited never appointed any workers for its canteen and much less removed any one of them, as they were solely employed by the contractors for rendering services in the canteen. The terms and conditions of the canteen staff were determined by the contractors themselves, who had necessarily the power of appointing them as well as removing them. The contract of the Industrial Catering Services (ICS) expired on the 31st March, 1978. The ICS paid off the termination benefits and other entitle Agents of their workers effecting full and final settlements. Before the expiry of the contract with the Industrial Catering Services, the Corporation considered inviting tenders from various contractors for the period after the 31st March 1978. It is important to state here that the contract workers in the canteen at this juncture, about March 1978, approached the management and expressed their willingness to run the catering services themselves by forming themselves into a Society (The Visakha Refinery Catering Employees Association). It is in this context and for these reasons alone, that the management entered into an agreement with all the then members of the Visakha Refinery Catering Employees' Association collectively for running the cafeteria services on the 20th July, 1979. One cannot treat the contractors as employees of the Company and there is no scope in the I.D. Act for the same. The allegation in the claim statement that contractors should be treated as workmen and all the terms and conditions applicable to the employees of the company should be made available is not correct. All the petitioners herein except petition Nos. 6, 13, 17 & 22 were working as employees of M/s. ICS. ICS contract period was completed on 31-3-1978 and thereafter, all the petitioners herein came in a group and made representation to the Management, that they were well experienced to run the canteen and requested the Management to give them a chance to run the canteen in

their Association capacity. They had stated that they would form into a Cooperative Society by getting registered under the Cooperative Societies Act and till then, permit them to work like one group as per the terms of the contract. Having satisfied with the service of the Association, the management had entered into a comprehensive contract No. COR-127 with the Association which was signed on 20-7-1979 which in fact came into effect from 1-4-1979. On behalf of these 26 workmen, Sri B. Nageswar Rao, S. Diwakar Reddy and K. Satyanarayana Rao took the leadership and negotiated with the Management and this Association which resulted in entering into a contract dt. 20-7-1979 and all the terms and conditions were reduced into writing. All the petitioners signed as parties to the agreement. Accordingly the Management was discharging its obligation and making payments. The contract No. COR-127 dt. 20-7-1979 was given effect to. The allegation that the petitioners are not conversant with English to the extent of understanding the contents of the contract is not correct. Further allegation that the contents are not read over and not explained in their mother tongue and as such, there was no other alternative for the petitioners except to sign the contract as they were threatened that they will not be permitted to work in the cafeteria unless they sign the contract is totally false. The allegation that all the petitioners are working under the supervision of supervisors and officers appointed by the management of HPCL i.e. the Respondent is not correct. The Refinery Catering Officer looks after implementation of agreement, ensures proper and timely supply of food materials to avoid problem and also ensures that contractors have paid wages, PF, ESI to their workers. The purported letter dt. 23-5-1983 filed by the petitioners is infact an internal file note from the Senior Manager, Personnel & Administration to the General Manager of the Refinery. It dwelt on the subject of unsatisfactory service in the canteen, increase in workload in the canteen due to additional intake of man power to the Visakh Refinery Expansion Project, the inability of existing cooks and helpers (petitioners) to prepare additional meals and render additional service and therefore seeking approval of General Manager for the scope of additional work to be entrusted to the contractors. As explained, in the earlier paras, the total compensation of Rs. 19,480.00 under Contract No. COR-127 is on the promise that the Association engages a certain number of cooks, bearers, helpers, cleaners etc. If work load increased the contractor has to have additional hands for this purpose administrative approval is required, without which Finance Department will not pass bills for additional compensation to the contractor. The allegation that Sri K. S. Rao, Sri Reddy and Sri Nageswar Rao are the employees and they were termed as President, Secretary and Treasurer is not correct. The allegation that letter heads are printed with an ulterior motive to misguide as well as to escape from offer in the legitimate remuneration, obligations due to the workers of the canteen is totally baseless and false. One cannot term S/Sri Reddy K. S. Rao and Nageswar Rao as Supervisors. As stated earlier as per the terms of the Contract COR-127 management is making payment as on today. It is not necessary for the Association to get itself registered. It is fundamental right given under the Constitution to every citizen to form an Association. Management once again reiterates that it has no control on petitioner Association nor sanctioning leave to its workmen nor initiating any disciplinary action as is done in the case of permanent employees of the company. The allegation that the management is having financial control over the wages and over time allowances payable to the petitioner is not correct. The claim statement it is erroneous presumption that the management has categorically admitted that the petitioners are its workmen which is baseless and false. It is submitted that the petitioner is estopped at this stage to make the allegation that clauses 3 & 4 of the contract were not operated so the entire contract is not valid and as there are no elected office bearers of the said Association and every financial transactions should be done by them. The contention is outside the scope of reference. Since the Association has not registered as a Society the terms and conditions of the contractual agreement is binding on the Association and its members, both jointly and severally. The allegation that there is no Visakha Refinery Catering Employees Association is not correct. The allegation that the Association is a fake one created by the management is false and baseless. The further allegation made by the petitioner that it is only a camouflage with a paperwrapped arrangement to circumvent the obligations and liabilities provided under Labour Laws is denied. The Petitioner Association members are not enti-



pled for wages and benefits on par with the permanent employees of the management, much less the arrears as claimed by them, as they are not the employees of the company. It is submitted that there is no permanent staff for cafeteria, the entire cafeteria staff are under contract and the question of company paying wages on par with permanent employees does not arise. In view of what has been stated above, this Hon'ble Tribunal may be pleased to reject the reference and pass an award accordingly.

4. The point for adjudication is whether the Petitioners should be treated as the employees of H.P.C.L. and if they are to be treated as employees in which particular category or grade they should be fitted and to what salary they should be held entitled?

5. W.W1 to W.W5 on behalf of the Petitioner-workmen and marked Exs. W1 to W51. On the other hand M.W1 and M.W2 were examined on behalf of the Respondent-Management and marked Exs. M1 to M56. Exs. X1 to X4 and C1 and C2 were marked by the Court.

6. W.W1 is V. Brahmananda Rao. In brief he deposed that he is the President of H.P.C.L. Cafeteria Employees Union since 1981. They raised a dispute to treat all the cafeteria employees as its permanent employees. For their letter management did not give a reply nor did they call them for negotiations. Then he filed W.P. 4433/82 in High Court. The High Court declared that all employees of cafeteria are employees of H.P.C.L. Earlier they obtained interim order not to adversely affect the service conditions of the employees. The management filed W.A. 811/84. In W.A. the High Court allowed the W.A. in part and directed reference of the dispute to Industrial Tribunal. After filing of Writ Petitioner Management placed 2 employees under suspension. It was done while W.A. 811/84 was pending. The suspended workers are S. Abel and V. Gurumurthy. They approached the High Court in W.P. 19528/87 and obtained interim orders in W.P.M.P. 25957/87 dt. 28-12-1987. Then management alone filed W.P.M.P. No. 21/88. The interim order of High Court is confined. Ex. W5 is the affidavit filed by the management in W.P. V.M.P. It is annexure 13 of the claim statement. The management filed W.A. against the orders in 25957/87 which was confirmed. It W.A. 142/88. The Union approached the Association to clarify whether they suspended the employees. In the W. Appeal as well as W.P.V.M.P. the management took the stand that the employees are not employees of Corporation but they are employees of Visakha Refinery Catering Employees Association. It is the stand of management that the Association suspended the employees. The Secretary of Association said he is not aware of any suspension order. Ex. W6 is his letter. It is annexure III to claim statement. The Secretary also stated that there are no rules and regulations and that no Bye-laws were framed. That Association is not a registered Association. The petitioners are not aware as to how President and Secretary of the Association are appointed who appointed them. For the canteen the provisions are purchased by the management through its catering officer and three supervisors. The canteen is run in the premises of the factory. The three supervisors distribute the salaries to workers. H.P.C.L. gives the money to supervisors for distributing salaries to workers. The money disbursed represents salaries and allowances. It does not cover cost of provisions. The Management is regulating the overtime. Annexure of claim statement marked as Ex. W7 shows the details. So also Ex. W8 is Annexure 9 of claim statement also shows it. The management issues orders of transfer for employees from one canteen to another canteen. Annexures 5 and 6 Exs. W-9 and 10 shows this. When Association wants to initiate disciplinary action it consults the management and on their direction take action as is clear from Annexure 8 marked Exs. W11. Annexures 14, 15 and 16 are copies of Memorandum of Settlement between H.P.C.L. and its canteen at Bombay. They are marked as Ex. W12, W13 and W14. The Canteen officer and the three supervisors exercise control over the cafeteria employees. They exercised Administrative, Disciplinary and financial control. Their Union is not aware of the Secretary of the Association had obtained a licence or permission under Abolition of Contract Labour Act. The Secretary never consulted them and they did not know about his filing application before the authorities of Contract Labour Abolition Act. Only on seeing the counter filed in the I. D. they came to

know about the Secretary obtaining a licence or permission. The Secretary of Association informed them that Association has no Bank Account Ex. W-15 dt. 4-1-1988 shows this. The Management is issuing cheques in the names of 2 individuals Mr. S. T. Reddy and Mr. Nageswara Rao and those people distribute money to workers. This S. T. Reddy and Nageswara Rao and the supervisors working under Canteen officer. The cheques issued to them include their salaries also. The salaries paid range from Rs. 190 to 240 and even upto Rs. 600.00. They are far below the rates of minimum wages prescribed under the Act. The Association cannot employ new workers without approval of H.P.C.L. Most of the petitioners are uneducated. Some of them know how to sign their names. There are no appointment letters to these workers either from H.P.C.L. or from the Association. The canteen work is of a permanent character. It is a statutory obligation. In this Award they seek the relief of declaration that all the employees of canteen are employees of H.P.C.L. They also pray that they should be paid wages on par with permanent cafeteria employees of H.P.C.L. They also claim arrears from the respective dates of their entry into service.

7. W. W2 is N. Satyanarayana. In brief he deposed that he is the General Secretary of the H.P.C.L. Cafeteria Employees Union from the year 1981. He is working as Draughtsmen in H.P.C.L. since September, 1978. The Cafeteria is meeting the requirement of food stuffs of the entire H.P.C.L. compliments including Marketing employees. The Management is fixing the pay scales of the employees working in the Cafeteria and the management is increasing the wages of those employees from time to time. In support of the same he is filing Ex. W18, letter dt. 17. 11. 1980 addressed by the General Manager to the Visakh Cafeteria Employees Association. The H.P.C.L. Management has been deciding the required man power for cafeteria. To that effect, he is filing the letter dt. 23-5-1983 addressed by the Senior Manager, H.P.C.L. which is Ex. W19. There is no Association for the Cafeteria employees and so the question of taking any action by the Association of the Cafeteria against the delinquent employees of the Cafeteria does not arise. The H.P.C.L. management has written a letter dt. 26-11-1987 addressed to the Association enhancing the amount of remuneration and the said letter is marked as Ex. W21. The Management has written another letter dt. 11-10-1988 addressed to the Association and the same is Ex. W22 imposing certain conditions. To those letters their Union has given a letter dt. 14-10-1988 accepting the payment without prejudice to their claims before the Tribunal as per the order of Supreme Court which is Ex. W23. A statement is prepared showing the salaries of non engaged staff from March 1979 to December 1979. The said statement is Ex. W24. The payment made by the Management are not in lumpsum payment and the same is evident by the document dt. 17-8-1983 dt. Nil. 11-8-1983, dt. 19-8-1983, dt. Nil, which are marked as Ex. W25 to W29. The Cafeteria Officer of the HPCL fixed the over time wages. The copy of the overtime register maintained by the Cafeteria Officer is marked Ex. W30. The management alone arranges for the medical examination of the cafeteria employees as per the letter dt. 2-11-1988 marked as Ex. W31. There was a recognition agreement dt. 22-1-1988 between the Management and its employees Union and the same is marked as Ex. W32. It is mentioned in the said agreement that Cafeteria employees will be treated as employees of the H.P.C.L. On 27-12-1983 the management and the Union entered into an agreement which is marked as Ex. W33 agreeing to abide by the Ex. W32. There is deduction towards E.S.I. contributions for the cafeteria employees right from the time of enforcement of E.S.I. Act which is Ex. W34. Ex. W34 is the E.S.I. Card. Cafeteria employees and H.P.C.L. employees are covered by the same code given by the E.S.I. authorities. There is a Managing Committee to look after the affairs of the cafeteria and some members are nominated by the General Manager to the Managing Committee and some members are nominated by the employees. There is letter dt. 7-4-1986 marked as Ex. W35 issued by General Manager constituting Managing Committee. The Cafeteria expenditure is borne by HPCL under the head "Business expenditure" seeking relief from the Income Tax Department. The chart prepared by their Union showing the salary statement from April 1978 to November 1987 is Ex. W40. The management and the Union came to an agreement and fixed the rate of the food stuffs supplied by the Cafeteria. The Management supplies utensils and all

the provisions for the preparation of food stuffs in the cafeteria. The amount paid by the Management represents only the salaries of the Cafeteria employees. Salary includes P.F., E.S.I. employers contributions Bonus. The Cafeteria employees never formed into an Association and elected any office bearers. The said Association has not conducted any meetings till today. The Association as such was not formed at any time. The present I.D. is filed to treat them as permanent employees and pay salaries on par with permanent employees of HPCL.

8. W.W3 is K. Rama Rao. In brief he deposed that he is working as Washer-cum-Sweeper in the Canteen from 1971. The Company Personnel Officer by name Sri Chedda appointed him and he reported for duty in the Canteen. He was not given any written appointment order. He does not know any Association of the Canteen and he was never a member of the Union. However his signature was taken on some papers during the years 1978-79 by C.L. Rao working as Personnel Officer and one Gorden. His signature were taken in 13 blank white papers and the signature of others, working in the canteen were also taken in the said blank white papers. They were told that they will lose that job in case they did not sign in the blank white papers and so they signed on those blank white papers. He is not a member of Visakha Refinery Catering Employees Association. He is not aware of such an Association. None of the staff members of the canteen participated in any of the meetings said to have been convened by the above Association. Coril Industrial Catering Employees Union was in existence in the year 1977. C. Nageshwar Rao, one Reddy and K. S. Rao were office bearers of the said Union. One P. Mallikarjuna was the President of the Union. He met the General Manager by name V. Srinivasan and made a representation to regularise the services of the employees working in Canteen. He died one month later. Thereafter P. L. Rao and Gorden took our signatures in blank white papers stating that their signatures are required to regularise their appointment. One K. S. Rao is working in the Canteen and he pay the salaries to them. There is Cafeteria Officer appointed by the Company and he assigns the duties to all the employees pertaining to canteen. The Company supplies all the provisions to the canteen to prepare food stuffs. The entire furniture in the canteen belongs to the Company. The tokens for the purchase of food stuffs are sold by the Company. No cash is paid to the employees in the canteen to purchase food stuffs and they purchase food stuffs by giving tokens. The Company Cafeteria Officer decides the over time of the employees working in the Canteen. The Company takes a decisions in regard to payment of salaries to the employees working in the Canteen. There is Hindustan Petroleum Cafeteria Employees Union from the year 1981 and he is a Member of the said Union, himself and other employees of the Canteen filed a Writ Petition No. 4433 of 1982 in the High Court to treat us as the employees of the Company and for other benefits. That Writ Petition was allowed on 16-3-1984 and the copy of the judgement is marked as Ex. W43. They approach the Cafeteria officer in writing for grant of leave and Cafeteria Officer grants them leave. They want to be treated on par with the employees of the Company.

9. W.W4 is S. Abel. In brief he deposed that he is working in the Visakhapatnam Refinery as a Cook in its canteen since the year 1979. He was selected for the post of by the General Manager, Personnel Officer, Maintenance Officer and Operational Manager. They interviewed him, tested by cooking abilities and then appointed him. He was interviewed and tested along with four other candidates for the post of a cook, and he was alone ultimately selected. The H.P.C.L. Management will supply all raw material necessary for the preparation of the food stuffs in the canteen to them along with utensils. The Canteen sells the needs of all employees of HPCL of all departments. The management itself supplies coupons to the customers, and it is only on production of the necessary coupons, they give food stuffs in their canteen to the customers. They do not sell or issue coupons in their canteen. They also do not sell the food stuffs for ready cash in the canteen. They merely honour the coupons issued by the management. Their salaries are being paid through the Supervisors of the HPCL. The Cafeteria Manager of the HPCL decides daily menu for preparing the food stuffs. They have to apply for any leave whenever required to the Manager of the Cafeteria. It is not

true to suggest they are not the employees of the H.P.C.L. and that they are only the workmen of a contractor by name Visakha Refinery Catering Employees Association. He was never a member of any such Association. The Catering Officer determines and stots the over time work etc. to them. They are seeking the relief of declaration that they are the regular employees of the H.P.C.L. and consequential benefits.

10. W.W5 is K. Sanyanarayana Rao. In brief he deposed that he has been working as Supervisor, Cafeteria in the Respondent Company since about 50 years. Prior to the nationalisation of Caltex Oil Refineries himself and some other workers were working under Canteen contractor in that Caltex Oil Refineries. At the time of Nationalisation Industrial Catering Service was the Canteen Contractor in Caltex Oil Refineries and it was continued to be the Canteen Contractor for some time even after the Caltex Oil Refineries was nationalised. After Nationalisation the name of Caltex Oil Refineries was changed as Hindustan Petroleum Corporation Limited i.e. Respondent Corporation. After the expiry of term of contract of the Industrial Catering Services in H.P.C.L. after it was nationalised himself and other workers working under a Contractor approached the Management of the Respondent Corporation to absorb them in the services of the Respondent Corporation, but there was Coril Industrial Catering Service Employees Union for the contract workers under the contractor. He was the Secretary of that Employees Union. Ex. W15 is the notatised copy of the letter dt. 28-2-1978 addressed by their Employees Union to the General Manager, Refinery Caltex Oil Refining (India) Limited, Visakhapatnam. He does not know who made the corrections appearing in Ex. W15. After they made their representation for absorption, the management of the Respondent asked them to work for some time on payment of consolidated amounts per month and told them that after seeing the performance of their work they will consider their cases for absorption, and an agreement was executed between us and the management in that regard. Ex. W1 is the photostat copy of the said agreement dt. 1-4-1978. He was a party to it and he signed on that agreement. He does not remember whether all the workers have signed on the said agreement at one and the same time or at different time after the agreement was prepared. He does not remember who was the author of the said agreement. Subsequently another agreement COK 127 dt. 20-7-1979 in Ex. W3 was executed between the management and the workmen. By the date of Ex. W3 also he was the Secretary of the Employees Union. Prior to the date of Ex. W-3 no election was conducted for electing the office bearers of the Employees Union. The Management asked them to form an Association at the time of execution of Ex. W3 and the said term was incorporated in Ex. W3 agreement. In pursuance of the said term in Ex. W3 they formed an Association and elected the office bearers namely President, Secretary etc. The said Association is named after Visakha Refineries Catering Employees Association. He does not remember on which date the said Association was formed. The minutes were written at the time of formation of the Association and the said minutes are not available with him at present. He does not remember how many members attended that meeting in which the minutes was passed. The said Association was not registered. No By-laws were drafted for the said Association. No meeting of that Association was convened so far till today, after its formation. The consolidated amounts agreed to be payable to the workmen under Ex. W-3 represent the monthly salaries, Provident Fund contributions and the contributions under the ESI Act etc. As per the agreement under Ex. W3 25 persons have to work in the Respondent for the lumpsum amount of Rs. 36,000.00 payable to them under the said agreement. If there are any casuality in the said 25 workers, the proportionate amount payable to the deceased workmen was being paid back to the Respondent every month after drawing the entire amount of Rs. 36,000.00 by them. The pay of Rs. 36,000.00 was being made by the Respondent to them by way of issuing cheque in the name of President and the Treasurer of their Association but there was the personal joint account in the names of the President and the Treasurer. The quantum of the salary payable to each of the workers is decided by themselves. Originally the amount of Rs. 1,950.00 for the first year and Rs. 19,400.00 for the second year was payable to them by the Respondent towards their salaries and later by virtue of the order of the High Court dt. 17-2-1983 in Writ A. No. 811/84 in Ex W44 the amount was enhanced to Rs. 36,000.00 per month.

w.e.f. 1-11-1987. The particular of the salaries of each employee shown in Ex. W40 are correct. The President of their Association enhanced the salaries of Sri B. Nageswar Rao, the President, himself, the Secretary and Sri S. B. Reddy, the Treasurer. He does not know the reason why salaries of other persons were not increased. Their Association has no office. All the workmen involved in this dispute were members of their Association originally. After the workmen went to the court, they did not keep the records of their Association intact and they could not be traced by him now. They have collected subscriptions for formation of the Association. He has no recorded evidence to show that they have collected the subscriptions from the workers. It is not correct to state that no subscription was paid by any of the worker at any time and that no association was formed. He is not an employee of the Respondent even now. The Respondent is paying overtime allowance to the workers who worked overtime from out of the workers in Ex. W3.

11. M.W1 is P. L. Rao. In brief he deposed that he worked as Chief Industrial Relations Manager in H.P.C.L. Bombay and retired on 28-2-1990. When the term of contract period was over and H.P.C.L. was contemplating calling for tenders, the workers that were working under the contractor came forward with a proposal that they will form into a cooperative society and themselves will run the canteen. For the permission of the company they convened a meeting and selected three representatives. They are Nageswara Rao, Mr. Reddy and another Rao. Those three representatives are not there in the 25 workers in Annexure to the reference. They entered into a memorandum of agreement on 1-4-1978 with the company and the agreement is Ex. M10. All the employees viz. 2 to 26 mentioned in Annexure 'A' signed this Ex. M10. After entering into the agreement Ex. M10, they did not form a cooperative society but they continued to run the canteen. These people opened a Bank account in the name of Visakha Refinery Catering Employees Association and the Company used to issue cheques in that name. The Company did not pay the salaries to these employees as it used to pay its own employees, as these are not their employees and only the contract labourers. Ex. M20 also was signed by all these 25 workers including the three original representatives selected by these employees. These 25 people signed on behalf of the claimants and the claimants and the signatures of Ex. M10 and M-20 are one the same. On behalf of the Management then the General Manager one K.D. Sethi signed Ex. M20. He attested as one of the witnesses. In the Ex. M20 it was laid down in Clause No. 9 that a contractor will take a licence under the contract Labour (Regulations and Abolition) Act, 1970 and these people took the licence. These details of catering works were mentioned by way of specifications No. V-060 attached to this agreement Ex. M-20 itself. (attached between pages 2 & 3) of Ex. M20). The licence they obtained as per Clause 9 of Ex. M20 is Ex. M21. From March 1983 four extensions were entered into, one extension for every three months as per Ex. M32 to M35 upto end of May 1984 (31-5-1984). During this entire period the terms and conditions of Ex. M20 C.O.R. 127 dt. 1-4-1979 were only being continued. Under Ex. M20 this Association should maintain not only the canteen but also should cater to the needs of Guest House and the Club. Thus under Ex. M36 they mentioned the employees of all these three units. Under contract labour (Regulation and Abolition) Act 1970 they as principal employers are expected to know the number of workmen working and whether the contract was properly disbursing the wages etc. Thus Ex. M36 was sent to them. Because of increase of work in the catering section etc. they requested the President of the Club to withdraw six employees from the club as per a letter dt 9-4-1985 Ex. M37. The affidavit of one Brahmanandam as President of the Employees Union is W. P. 4433/82 is Ex. M-38. There is regular recruitment procedure fixed for recruiting the employees in H.P.C.L. like notifying the employment exchange, conducting interviews and written test for some jobs etc. There is a separate selection board for this purpose. The permanent employees are entitled to L.T.C. bonus etc. They have also got standing orders for the permanent employees which will deal with their service conditions. None of the above provisions are applicable to the employees 2 to 26 of Annexure 'A' of the reference as they were not recruited by the H.P.C.L. following all the above modalities etc. Only the Contractor used to take the Responsibility of the appointment, leave sanction and removals of these employees. Exs.

M2 to M7 indicate that the disciplinary action also was being taken only by this Visakhapatnam Refinery Catering Employees Association as against these employees but not the H.P.C.L. Exs. M41 to M45 are the leave applications of these employees addressed to the Management cafeteria and they were also approved only by Reddy, B. Nageswar Rao for catering employees Association. We do not have any administrative control over these 26 employees. They cannot be treated as their employees under any circumstances and they are not entitled to any relief from the Company as they are the contract about only. The Visakha Refinery Catering Employees Association gave them a letter signed by their President Nageswara Rao asking them to give them letter of consent to formulate the Cooperative Society Ex. M46 dt. 30-7-1979. They have also enclosed a copy of the resolution passed at that meeting as per Ex. M46. Ex. M47 is their reply giving their consent for forming into cooperative society and getting it registered Ex. M47 dt. 31-7-1979. Later on they did not hear from them.

12. M. W2 is V. Vijaya Sarathi. In brief he deposed that previously he worked as Manager (Industrial Relations) in Visakhapatnam Unit of the Respondent from 1979 to 1990 November. The recruitment section in Visakhapatnam deals with recruitment of permanent employees in Visakhapatnam Unit i.e. Respondent-Company. For appointment of non-management staff in the Respondent they notify the vacancies to the Employment Exchange to recommend the suitable number of names for recruitment. Ex. M48 is the proforma of the requisition issued to the Employment Exchange for notifying the vacancies. After receiving the list of the candidates from the employment exchange they scrutinise the list of candidates as per the requirement to each post. Thereafter they will send the call letters to the concerned candidates. Ex. M49 is the proforma of the call letter that will be issued to the candidates. Thereafter, a written test will be conducted to the said candidates and those candidates who passed in the written test will be called for interview. After conducting the interview, the candidates will be selected and the appointment letters will be sent to the selected candidates in proforma like Ex. M50. The service conditions of the non-management staff will be governed by the certified Standing Orders of the respondent-company. Ex. M-51 is the copy of the certified Standing Orders of the Respondent-Company. A permanent employee who wants to apply for any type of leave he has to submit his leave application in the proforma prescribed by the Respondent Company. Ex. M52 is the printed proforma for applying any kind of leave. The Respondent-Company issues the gate pass to all the employees to enter into the premises of the Respondent-Company. Ex. M53 is the proforma of the gate pass issued to the permanent employees. For contract labourers, separate gate pass would be issued and Exs. M54 and M55 are the two gate passes issued to two contract labourers viz., Shaik Sikander and Mr. Y. Mahalaxmi. The gate pass will be issued to the contract labourers for a period of one month and it is to be renewed for month to month. The staff in the canteen within the premises of the Respondent-Company is the contract labour staff. For permanent employees of the Respondent-Company, the disciplinary action will be taken as per the regulations in the certified Standing Orders of the Respondent-Company, and the contractor will take disciplinary action against the contract labourers engaged in the canteen. The management of the Respondent-Company has no administrative control over the contract labourers engaged by the contractor in the canteen. Visakha Refinery Workers' Union is the recognised non-management employees Union of the Respondent-Company. The Management of the Respondent had nothing to do with the contract labourers. The Respondent-Company follows the statutory provisions under Contract Labour (Regulations and Abolition) Act, 1970.

13. Now this Tribunal has to see whether the relationship of employer and employee stands created between the workmen and the management, in the light of COR 127 dt. 20-7-1979, whether the Association by name 'Visakha Refinery Catering Employees Association' is in existence at any point of time, whether the workmen have to resort to the provisions of contract Labour (Regulations & Abolition) Act is tenable and lastly what are the designation available and spots prescribed for the said designations and w.e.f. what date the workmen are entitled to the relief?

14. Under Section 46 of the Factories Act ordains the employer to provide and maintain the canteen in terms of the legislative obligation. There is no dispute regarding the present canteen is being maintained in pursuance of the referred obligation by the Management. As such the workmen herein have been working in the Canteen provided and maintained by the Respondent. The Petitioner cited the judgement of Hon'ble Supreme Court in SARASPUR MILLS CO-OPERATIVE LTD. v. RAMANLAL CHIMANLAL AND OTHERS (AIR 1973 SC 2297 Paras 10 & 11) held as follows:

"Brief Notes: (A) Section 46 of the Factories Act casts obligation on the Mill to maintain a Canteen for its employees. Canteen if entrusted to the Co-operative Society to run on its behalf, the workers employed by the Society became the employees of the Mill for purpose of emoluments and such other ancillary benefits."

Another judgement of the Supreme Court in M.M.R. KHAN v. UNION OF INDIA (AIR 1990 S.C. 93) held as follows:

"The Employees in the statutory canteens of the Railways will have to be treated as Railway Servants. The relationship of employer and employee stands created between the Railway Administration and the Canteen employees from the very inception."

In this decision statutory Canteens have been understood as Canteens provided under Section 46 of the Factories Act. Another decision, cited by the Petitioner in A. P. DAIRY DEVELOPMENT COOPERATIVE FEDERATION LTD. v. SHIVADAS PILLAY AND OTHERS (1990) (61) FLR page 239 held as follows:

"Canteen established under Section 46 of the Factories Act, for the workers employed in a factory. The employees in the canteen would become employees of Federation."

The Respondent in this case approached Hon'ble Supreme Court by Special Leave (Civil) No. 1307-10 of 1990 in the Hon'ble Supreme Court on 5-3-1990 dismissed the said Appeal confirming the above judgement of A.P. High Court. The Bench of A.P. High Court in W.P. M.P No. 1349/91 by an Order dt. 7-2-1993 clarified the above referred judgement and directed as follows:

"therefore, the Respondent Federation is directed to fix suitable pay scales for the petitioners having regard to the nature of work done by them and the pay given to the similar categories of employees, together with the attendant benefits which the other employees of the Federation are getting."

In the light of the above legal position and admitted facts the relationship of employee and employer stands created as such this point is held in favour of the Petitioner-Workmen.

15. The next contention of the Petitioner-Workmen is that they have been working in H.P.C.L. Canteen since its inception (1967). From 1978 onwards, after expiry of the contract with Industrial Catering Services, they have been directly working under H.P.C.L. without any Contractor. They sought regulation of their services by letter dt. 28-2-1978 under Ex. W50.0. But it appears that the then Personnel Manager Mr. P. L. Rao (M.W2) corrected and redrafted the said letter and obtained the same as a redrafted form which Ex. W49. This fact of redraft or change in prayer is not made known to the workmen till recent past. In the said modified letter i.e. Ex. W49 only, the then Personal Manager inserted the idea of floating on Association Society. This modified request contained in Ex. W-49 was contradictory to the though denied in his cross examination, his hand writing contained in Ex. W-49 compared with his admitted notings in Ex. W-47 and Ex. W-47(a), it is proved beyond doubt that he was the person who modified Ex. W50 and obtained Ex. W49 in the modified form. The contention of the Petitioner workmen is that COR 127, dated

20-7-1979 has been manipulated by the Management on the signed papers obtained from the workers. It is admitted by M.W. 2 that the legal section of H.P.C.L. prepared COR 127 i.e. Ex. W-3 and the specifications attached to it. The Petitioner workmen contend that all the workmen are not educated. The terms of COR 127 were never read over or explained to them in Telugu. It is not even stated in COR 127 that contents of the same have been read over and explained to the workers. It is the contention of the workmen that the said COR 127 was manipulated/fabricated by the Management. The said document was said to have been executed on 20-7-1979 w.e.f. 1-4-1979. In the said agreement, it was mentioned that Sri S. D. Reddy, Sri B. Nageswara Rao and Sri K. S. Rao as office bearers of an association. Even according to the Respondent Ex. M46 communication of the alleged election was subsequent to 20-7-1979. Ex. W47 note of M.W. 1 to Mr. Gaugen, clearly establishes that the agreement COR 127 was not finalised till 30-7-1979. The contentions of the Respondent is that the above allegations are an after thought. If that is the case reference would have been intirely different. The Government would have focussed the attention on the document which according to the contract labour now that is a manipulated document. That is outside the scope of reference. Industrial Tribunal will have to decide the reference on the basis that the document is valid and binding. In fact that was not in issue before Tribunal and it is not open to the Tribunal to go beyond reference. I find that it is evident beyond doubt COR 127 dt. 20-7-79 had been brought into existence subsequent to 30-7-1979. Since the terms and conditions of COR 127 i.e. Ex. W3 and W4 have been admittedly prepared by the Legal Cell of HPCL and since there is no evidence from the Management that those conditions have been drafted on the bilateral discussion on each point, the said agreement is bad in law.

16. The Petitioner-Workmen contended that they are the workmen of H.P.C.L. Management in its counter in Writ Petition under Ex. W-16 affidavit in W.A.M.P. No. 1191/84 (Ex. W17) special leave petition (Ex. W51) and the rejoinder filed in this I.D. that the workmen herein are the 'contractors' but not its workmen. This Tribunal has to see whether the workmen are the employees of H.P.C.L. or the independent commerces. The Petitioner workman contends that the amounts payable under COR 127 represents only the wages and other allowances and nothing else. The workman have been working for the benefit of H.P.C.L. within its premises, and with the equipment supplied by H.P.C.L. The Respondent supplies the provisions for the preparation of food stuffs. It issues token to the employees, who on production of the same obtain food stuffs from the Canteen. The Committee appointed by the Respondent its regular Catering Officer, decides the menu and as per the directions and under the supervision of the said catering officer the Canteen functions. The Catering Officer supervises the quantum also. As seen, Clause 3 of the said agreement stricts right of appointment of third parties. Clause '8' deals with provisions to be supplied and regulation of over time. Clause 15 deals with washing charges for the uniforms supplied. The contributions like E.S.I., P.F. have also been categorically specified to be provided by the Management. E.S.I. Code for the permanent establishment and the present workmen was one and the same Code No. 51029341, which is marked as Ex. W34. It is seen only after the evidence of workmen, the Respondent got the code changed. The Respondent provides medical facilities in its dispensary and the Supervisor of the Canteen signs the medical chits as head of the department as seen from Ex. W31. Exs. W9 and Ex. W10 letters the Management transferred the workmen from one place to another place. As per Statement in Ex. W-24 showing the amount to be surrendered i.e. the unpaid salaries have to be remitted back to the Management. As seen from Ex. W10 Mls. B. Nageswar Rao, K.S. Rao and S.D. Reddy so called office bearers, have been designated as 'Supervisors' by the Respondent. Though M.W2 denies the management in para 19 of its rejoinder admitted the existence of the File Note (Ex. W-10) and tried to explain the same.

Payment made under Ex. W25 confirms the truth and the implementation of Ex. W10. Method of payment of wages has been administratively controlled by H.P.C.L. as seen from Ex. W18 letter. Ex. W8 letter dt. 5-10-1984 is for the pur-

pose of overtime prior approval of I.P.C.L., is mandatory. Ex. W11 is the draft for disciplinary action against the workman also Respondent exercises control and supervises. Even in Ex. W21 these three individuals have been designated as Supervisors. Ex. W30 testifies that Catering Officer controls overtime control register. Ex. W22 clearly testify the designations of supervisors and the amounts payable under COR 127 has been termed as salaries. Leave applications are addressed to Catering Officer. On the other hand nothing was disputed about the above documentary evidence by the Management in their rejoinder. It is very clear that the Respondent exercises administrative, financial supervisory, disciplinary control over the petitioner-workman. As seen from COR 127 only the Personal Services by the workmen are intended to be supplied. Hence I find in the light of the above, the workmen categorically proved the existence of master and servant relationship. It is pertinent to note that Hon'ble High Court in its Order Ex. W44 while ordering reference to this Tribunal observed as follows :—

“Merely that they are formerly working in terms of the aforesaid contract or under the name style of an Association or Society is of no consequence. One must look at the true nature of the engagement and if so, it is clear that they are and must be treated as the employees of the Corporation. It is true that in industrial law one should not be guided by the form. One must look at the substance of the matter. It is a matter of common occurrence that to avoid the several obligations and liabilities provided by several labour employers resort to various devices. Agreements are entered into, arrangements are made and several relationships created to mask the true state of affairs and thereby to circumvent the labour laws. There can be little doubt that such devices should not be allowed to succeed. One must look to the truth and substance of the matter and extend the benefits provided by law for workmen.”

So taking into consideration all decisions of the Supreme Court referred to above, I am of the firm opinion that the Respondent is the employer of the Petitioner workmen. Hence I hold this point in favour of the Petitioner-workmen.

17. This Tribunal has to see whether Visakha Refinery Catering Employees Association was really in existence or not. A perusal of Ex. W49 and COR 127 would show that no Association was ever formed, registered and brought into existence. The so-called association is only a paper creation by the Respondent and is a myth in nature. As per COR 127 which is said to have been entered into between some of the workmen and the Management, a Society has to be formed and on its formation the canteen has to be transferred to that Society. W.W5 in his chief examination has categorically admitted that it is not registered. He also deposed that there are no byelaws and Bank Account for the said Association. Hence I find that in the absence of any such Association and any agreement with such Association, the Respondent is not justified in bringing the said non-existent Association into this case.

18. The next point that arises is whether the contention of the Management that the workmen have to resort to the provisions of Contract Labour Regulation and Abolition Act is tenable. The Respondent has categorically contended that the workmen herein are the ‘contractors’ but not ‘Contract labourer’ as seen in Ex. W17 at para 11 “Nor can the petitioners be termed as contract labourer...” In the light of the discussion mentioned above and in the light of specific admission of the Management that the workmen are not the contract labourer, this contention that they have to resort to the provision of Contract Labour (Regulations and Abolition) Act, is untenable. When there is no Association at all either in the eve of law of infact, the licence obtained under the above Act with the collusion of the Respondent for a limited period is of no consequence. As discussed supra the specific case of the Petitioner-workmen is that there is master and servant relationship between the Respondent and the petitioner workmen but not for either abolition of contract labour system under Section 10 of the Act. Hence the workmen in question do not resort to the provisions of Contract Labour Regulations and Abolition Act.

19. It is contended by the Petitioner-workmen that COR 127 i.e., Ex. W3 has been entered into by the workmen with the Respondent-Management by its Head Quarters at Bombay. Ex. W14 is All India settlement under Section 12(3) of the I.D. Act is binding on the entire industry. Ex. W12 is an Agreement dt. 24-7-1979 under Section 18(1) of the I.D. Act. These Agreements applies to various regions. The Respondent-Management i.e., H.P.C.L. Visakhapatnam falls under Eastern Region wherein various designations have been shown with the permissible pay scales. A perusal of Exs. W32 and W33 testified that the Respondent-Management has accepted certain designations as part of its establishment under the Head deemed workers. The written counter statement of the Respondent Management has accepted that the Canteen has been floated in order to cater the needs of Marketing Division also as seen from para 2 of Exs. W17 and W16. Though the Marketing Division is shifted to another premises recently, still the canteen is catering the needs of bulk plant and terminals. The work in the Respondent Management is perennial in nature and which is incidental to the main activity, hence the Petitioner-Workmen are to be treated as employees of the Respondent-Management with effect from 1978 and the entire service right from 1958 has to be counted for all other benefits. The Bench of the Hon'ble High Court while directing the reference expressed its prima facie opinion in its concluding paragraphs, it directed payment of salaries, admissible to the employees basing on the Grade in Eastern Region w.e.f. 16-3-1984. I direct the payment of appropriate scales and designations in terms of Exs. W12 and W14 with effect from the date of COR 127 dt. 20-7-1979 Agreement.

20. On a consideration of the facts and circumstances stated above, I declare that all the 26 petitioners shown as employees in Annexure-A as the employees of the H.P.C.L. Management and they shall be paid wages conferring all the privileges in accordance with the settlements entered into under Annexures XIV, XV and XVI together with arrears from the dates of amalgamation of canteens in the Respondent-Management.

21. In the result, the Petitioners 2 to 26 mentioned in the Writ Appeal No. 811/84 and Petitioners in W.P. No. 1901/88 (Annexure A) filed in the High Court of Andhra Pradesh, Hyderabad should be treated as the employees of H.P.C.L. in the light of the Agreement (Contract No. COR-127) dt. 1-4-1979 and they are entitled to the payment of appropriate scales and designations in terms of Exs. W12 and W14 from the date of the agreement i.e. 1-4-1979 with all consequential and attendant benefits of arrears of pay etc. together with counting of entire service for the purpose of terminal benefits.

Award passed accordingly.

Tenel to my dictation, given under my hand and the seal of this Tribunal, this the 21st day of January, 1994.

Y. VENKATACHARIAM, Industrial Tribunal-I.

#### Appendix of Evidence

Witnesses Examined  
for the Workmen :  
W.W1 V. Brahmananda Rao  
W.W2 N. Satyanarayana  
W.W3 K. Rama Rao  
W.W4 S. Abel  
W.W5 K. S. Rao.  
Witnesses Examined  
for the Management :  
M.W1 P. L. Rao  
M.W2 V. Vijaya Sarathi

#### Documents marked for the Workmen :

- Ex. W1/1-4-78.—Photostat copy of the agreement dt. 1-4-1978.
- Ex. W2.—Photostat copy of the Memorandum of agreement entered into on 1-10-78, extending the agreement dt. 1-4-78.
- Ex. W3/20-7-79.—Photostat copy of the Contract No. COR-127 dt. 20-7-79.
- Ex. W4/1-4-79.—Photostat copy of the Specification No. V-060 dt. 1-4-79 for catering contract work details.

- Ex. W5—Photostat copy of the counter affidavit filed on behalf of Hindustan Petroleum Corporation Limited, Visakhapatnam in W.M.P. No. 21 of 1988 in W.P.M.P. No. 25957 of 1987 in W.P. No. 19528 of 1987.
- Ex. W6/1-1-88—Photostat copy of letter dt. 1-1-88 from Secretary, Visakha Refinery Catering Employees' Association to Mr. S. Abol.
- Ex. W7/23-5-83—Photostat copy of the Note No. PERS/PLR dt. 23-5-83.
- Ex. W8/5-10-84—Photostat copy of the letter dt. 5-10-84.
- Ex. W9 9-4-85—Photostat copy of the letter No. ADM/CHK/PER, dt. 9-4-1985 addressed by General Manager to the President, Coril Club, Visakhapatnam with regard to additional 9 for Employing alternate personnel for manning the club activities.
- Ex. W10/1-6-93—Photostat copy of file note recorded in June, 1983.
- Ex. W11/21-6-79—Photostat copy of draft letter dt. 21-6-79 addressed to Chandramani, Sarma waiter.
- Ex. W12/24-7-79—Photostat copy of the wage settlements 24-7-79.
- Ex. W13/13-4-83—Photostat copy of the wage settlements 13-4-83.
- Ex. W14/18-9-86—Photostat copy of the Memorandum of Settlement U/S. 12(3) of the I. D. Act, 1947 dt. 18-9-86.
- Ex. W15/4-1-88—Photostat copy of the letter dt. 4-1-88 from Secretary, Visakha Refinery Catering Employees' Association to the Secretary, H.P.C.L. Cafeteria Employees Union, Visakhapatnam.
- Ex. W16—Copy of the counter affidavit of R. M. Gordon in W.P. No. 4433/82 on the file of the High Court of Judicature of Andhra Pradesh at Hyderabad.
- Ex. W17—Copy of the affidavit of DSMV Prasada Rao in W.A.M.P. No. 1191/84 in W.A. No. 811/84 against W.P. No. 4433/82 in the file of the High Court of Judicature, Andhra Pradesh at Hyderabad.
- Ex. W18/17-1-80—Photostat copy of the letter dt. 17-1-80 addressed to Visakha Refinery Catering Employees Association by the General Manager, Hindustan Petroleum Corporation Ltd., Visakha Refinery with regard to catering contract No. COR 127.
- Ex. W19/23-5-93—Photostat copy of the letter dt. 23-5-83 addressed to the General Manager by the Sr Manager, Pers. & Admn. with regard to additional Man Power for cafeteria.
- Ex. W20/12-4-88—Photostat copy of the letter dt. 12-4-88 addressed to P. B. Vijaya Kumar, Advocate, High Court, Hyderabad by K. S. Rao, Secretary, Visakha Refinery Catering Employees Association.
- Ex. W21/26-11-87—Photostat copy of the letter dt. 26-11-1987 addressed by General Manager, Hindustan Petroleum Corporation Limited to the Visakha Refinery catering employees Association Visakhapatnam.
- Ex. W22/11-10-88—Photostat copy of the letter dt. 11-10-88 addressed by Chief Pers. & Admn. Manager, Hindustan Petroleum Corporation Limited to the Visakha Refinery Catering Employees' Association, Visakha Refinery, Malkapuram Visakhapatnam with regard to payment of lumpsum amount (compensation) effective from 1-11-87 in terms of COR-127 between HPCL and contractor.
- Ex. W23/14-10-88—Photostat copy of the letter dt. 14-10-88 addressed by Secretary, HPCL Cafeteria Employees Union to the General Manager, HPCL-Visakha Refinery, Visakhapatnam with regard to payment of lumpsum amount (Compensation) effective from 1-11-87 in terms of the orders of the Supreme Court on civil appeal No. 3268/88.
- Ex. W24—Photostat copy of the statement showing the salaries of Non-engaged staff from April 1979 to December 1979.
- Ex. D25/17-8-83—Photostat copy of the payment order to K. S. Rao dt. 17-8-83.
- Ex. W26—Photostat copy of the payment order to S.D. Reddy and B. Nageswar Rao.
- Ex. W27 11-8-83—Photostat copy of the payment order to S. D. Reddy and B. Nageswara Rao dt. 11-8-83.
- Ex. W28 19-8-83—Photostat copy of the payment order dt. 19-8-83 to S. D. Reddy and B. Nageswara Rao.
- Ex. W29—Photostat copy of the payment order to S. D. Reddy and B. Nageswara Rao.
- Ex. W30—Photostat copy of overtime control register maintained by catering officer.
- Ex. W31—Photostat copy of Voucher No. 670 signed by S. D. Reddy as department Head of HPCL with regard to Medical illness.
- Ex. W32/22-1-58—Photostat copy of recognition agreement 22-1-1958.
- Ex. W33/27-12-83—Photostat copy of the Memorandum of Settlement dt. 27-12-83 under Sec. 12(3) of the I. D. Act, 1947 between Hindustan Petroleum Ltd., (Visakha Refinery and Visakha Refinery expansion project) Visakhapatnam and Coril Employees Association, Regd. No. 3046, Visakhapatnam.
- Ex. W34—Photostat copy of E.S.I. Cards.
- Ex. W35/7-4-86—Photostat copy of the letter dt. 7-4-86 from General Manager, Hindustan Petroleum Corporation Limited, to all Department of Heads with regard to Cafeteria Committee.
- Ex. W36/WW2/26-1-85—Photostat copy of the letter No. PERS/VP dt. 26-1-85 from Chief Personnel and Administration Manager, Hindustan Petroleum Corporation Ltd., to the President Coril Employees Association, Visakhapatnam with regard to cafeteria Managing Committee.
- Ex. W37/4-3-88—Photostat copy of the letter dt. 4-3-88 from canteen employees to the Asst. Commissioner of Labour (C)/Dy. Commissioner of Labour, Visakhapatnam.
- Ex. W38/12-4-88—Photostat copy of the letter dt. 12-4-88 from Asst. Labour Commissioner (C), Visakhapatnam to the HPCL Cafeteria Employees Union, Visakha Refinery, Visakhapatnam with regard to unlawful attempts to register Visakha Refinery Catering Employees Association as a Society/Association or Contractor under the Provisions of Societies Act or Contract Labour Abolition and Regulation Act.
- Ex. W39/4-4-88—Photostat copy of the letter dt. 4-4-88 from President HPCL Cafeteria Employees Union to the Asst. Labour Commissioner (C) Port Area-Visakhapatnam (2) The Dy. Commissioner of Labour, Dwarakanagar, Visakhapatnam and (3) Dy. Registrar of Cooperative Societies Near Sea Peral Hotel, Visakhapatnam with regard to unlawful attempts to register Visakha Refinery Catering Employees Association as a Society/Association or Contractor under the Provisions of Societies Act or Contract Labour Abolition & Regulation Act.
- Ex. W40—Photostat copy of the Salaries Statement from time to time.
- Ex. W41/28-11-81—Photostat copy of AIDE Member, 28-11-81.
- Ex. W42/24-3-89—Photostat copy of Annual return of Union with list of members dated 24-3-89.



- Ex. W43 16-3-84—Photostat copy of the order dt. 16-3-84 in W.P. No. 4433/82 on the file of the High Court of Judicature, Andhra Pradesh, Hyderabad.
- Ex. W44 17-2-88—Photostat copy of the Order dt. 17-2-88 in Writ Appeal No. 811/84 on the file of High Court of Judicature, Andhra Pradesh, Hyderabad.
- Ex. W45 16-9-88—Photostat copy of the Order dt. 16-9-88 in Civil Appeal No. 3268/1988 on the file of the Supreme Court of India, New Delhi.
- Ex. W46—Leave application Form (Blank).
- Ex. W47 30-7—Photostat copy of the note dt. 30-7 on the bills prepared vis-a-vis the recent Auditor's irregularity report.
- Ex. W47 (a) 30-7—Photostat copy of the comments of P. L. Rao on Ex. W47 dt. 30-7.
- Ex. W48—Photostat copy of the Lunch Menu dt. 27-9-89 and 31-1-90.
- Ex. W49 1-3-78—Photostat copy of the representation dt. 1-3-78 from the President Coril Industrial Catering Service Employees Union, Visakhapatnam to the General Manager-Refinery Caltex Oil Refining (India) Ltd., Visakhapatnam with regard to regularisation of services.
- Ex. W50 28-2-78—Photostat copy of the letter dt. 28-2-78 from the President, Coril Industrial Catering Service Employees Union, Visakhapatnam to the General Manager-Refinery Caltex Oil Refining (India) Ltd., Visakhapatnam with regard to willingness to run the catering service.
- Ex. W51 6-7-88—Copy of the Special Leave Petition No. 8716/88, dt. 6-7-88 filed by the Respondent/Management in Supreme Court.

Documents marked for the Management :

- Ex. M1 18-12-87—Photostat copy of the Show cause notice dt. 18-12-87 issued to S. Abel, Assistant Cook by the Visakha Refinery Catering Employees Association, Visakha Refinery, Visakhapatnam.
- Ex. M2 18-12-87—Photostat copy of the letter dt. 18-12-87 addressed to the Asst. Comedent CISF H.P.C.I., Visakha Refinery, Visakhapatnam by the Visakha Refinery Catering Employees Association, Visakhapatnam with regard to stop S. Abel and B. Gurumurthy to enter the Refinery till further advice since they are kept under suspension pending enquiry.
- Ex. M3 5-12-88—Photostat copy of the letter dt. 5-12-88 addressed to S. Abel by the S. D. Reddy, Visakha Refinery Catering Employees Association, Visakhapatnam with regard to subsistence allowance for the period 18th December, 1987 to 30th April, 1988.
- Ex. M4 18-12-87—Photostat copy of the Show-cause Notice dt. 18-12-87 issued to B. Gurumurthy by the Visakha Refinery catering Employees Association, Visakhapatnam.
- Ex. M5 5-12-88—Photostat copy of the letter dt. 5-12-88 addressed to B. Gurumurthy by S. D. Reddy, Visakha Refinery Catering Employees Association Visakhapatnam with regard to subsistence allowance for the period 18th December, 1987 to 30th April, 1988.
- Ex. M6 30-8-88—Photostat copy of the letter dt. 30-8-1988 addressed to the Asst. Comedent CISF HPCL, Visakha Refinery, Visakhapatnam by S. D. Reddy for Visakha Refinery Catering Employees Association, Visakhapatnam with regard to lift suspension on S. Abel and B. Gurumurthy and to allow them to attend their duties.
- Ex. M7 26-8-88—Photostat copy of the regret letter dt. 26-8-88 addressed to P. B. Vijaya Kumar, Advocate by K. S. Rao, Secretary Visakha Refinery Catering Employees Association, Visakhapatnam.
- Ex. M8 1-4-78—Photostat copy of the Memorandum of agreement dt. 1-4-1978 between Caltex Oil Refining Ltd. and Refinery at Malkapuram, Visakhapatnam.
- Ex. M19—Photostat copy of terms and conditions of contractor.
- Ex. M10 1-4-78—Memorandum of agreement dt. 1-4-78 between the Contractor and the company.
- Ex. M10 (a) 1-4-78—Signature of K. Rama Rao at Serial No. 19 of the agreement dt. 1-4-1978 (In Ex. M10 at para 4).
- Ex. M11 19-5-87—Leave application form dt. 19-5-87 of K. Rama Rao to the Manager (Cafeteria) HPCL-Visakha Refinery, Visakhapatnam.
- Ex. M12 18-6-86—Leave application Form dt. 18-6-86 of K. Rama Rao to the President, Visakha Refinery Catering Employees Association, Visakhapatnam.
- Ex. M13 23-8-85—Leave application Form dt. 23-8-85 of K. Rama Rao to the President, Visakha Refinery Catering Employees Association, Visakhapatnam.
- Ex. M14 30-5-89—Leave application Form dt. 30-5-89 of K. Rama Rao to the Manager (Cafeteria) HPCL-Visakha Refinery, Visakhapatnam.
- Ex. M15 5-6-89—Leave application Form dt. 5-6-89 of K. Rama Rao to the Manager-Cafeteria Hindustan Petroleum Corporation Ltd., Visakha Refinery, Visakhapatnam.
- Ex. M16 22-6-83—Leave application Form dt. 22-6-83 of S. Abel.
- Ex. M17 23-10-81—Leave application Form dt. 23-10-81 of S. Abel.
- Ex. M18 27-6-86—Leave application Form dt. 27-6-86 of S. Abel.
- Ex. M19 19-1-77—Photostat copy of the Settlement dt. 19-1-77.
- Ex. M20 20-7-79—Memorandum of agreement (Contract No. COR 127) dt. 20-7-79 between Hindustan Petroleum Corporation Ltd. and Contractor.
- Ex. M21 11-1-80—Photostat copy of the Licence No. 10/227/80 dt. 11-1-80 granted to Visakha Refinery Catering Employees Association, Contractor under H.P.C.I. Visakhapatnam by Licensing Officer.
- Ex. M22 30-3-81—Photostat copy of the letter dt. 30-3-81 from General Manager to Visakha Refinery Catering Employees' Association with regard to renewal of catering contract.
- Ex. M23 9-4-81—Photostat copy of the letter dt. 9-4-81 from the President, Visakha Refinery Catering Employees Association to the General Manager, Hindustan Petroleum Corporation Ltd., Visakha Refinery Visakhapatnam with regard to extension of catering contract for two months i.e. for April 81 and May 81.
- Ex. M24 26-5-81—Photostat copy of the letter dt. 26-5-81 from General Manager to Visakha Refinery Catering Employees Association, Visakhapatnam with regard to renewal of Catering Contract.
- Ex. M25 26-7-81—Photostat copy of the letter dt. 26-7-81 from General Manager to Visakha Refinery Catering Employees' Association, Visakhapatnam with regard to renewal of Catering Contract.
- Ex. M26 28-9-81—Photostat copy of the letter dt. 28-9-81 from General Manager to Visakha Refinery Catering Employees' Association, Visakhapatnam with regard to renewal of Catering Contract.

- Ex. M27 30-11-81—Photostat copy of the letter dt. 30-11-81 from General Manager to the Visakha Refinery Catering Employees Association, Visakhapatnam with regard to Catering Contract.
- Ex. M28 18-1-82—Photostat copy of the letter dt. 18-1-82 from General Manager to Visakha Refinery Catering Employees Association, Visakhapatnam with regard to Catering Contract.
- Ex. M29 26-2-82—Photostat copy of the letter dt. 26-2-82 from General Manager to Visakha Refinery Catering Employees Association, Visakhapatnam with regard to Catering Contract.
- Ex. M30 30-4-82—Photostat copy of the letter dt. 30-4-82 from acting General Manager to Visakha Refinery Catering Employees Association, Visakhapatnam with regard to Catering Contract.
- Ex. M31 31-5-82—Photostat copy of the letter dt. 31-5-82 from Acting General Manager to Visakha Refinery Catering Employees Association, Visakhapatnam with regard to Catering Contract.
- Ex. M32 28-2-83—Photostat copy of the letter dt. 28-2-83 from General Manager, to the Visakha Refinery Catering Employees Association, Visakhapatnam with regard to Catering Contract.
- Ex. M33 31-5-83—Photostat copy of the letter dt. 31-5-83 from General Manager to the Visakha Refinery Catering Employees Association, Visakhapatnam with regard to Catering Contract.
- Ex. M34 29-11-83—Photostat copy of the letter dt. 29-11-83 from Acting General Manager to the Visakha Refinery Catering Employees Association, Visakhapatnam with regard to Catering Contract.
- Ex. M35 28-2-84—Photostat copy of the letter dt. 28-2-84 from General Manager to the Visakha Refinery Catering Employees Association, Visakhapatnam with regard to Catering Contract.
- Ex. M36 5-11-79—Photostat copy of the Representation dt. 5-11-79 made by Visakha Refinery Catering Employees Association to the Asst. Manager, Personnel Relations H.P.C.L. Visakha Refinery, Visakhapatnam with regard to remuneration bill and list of Staff on pay roll as on 31-3-79 P.M.
- Ex. M37 9-4-85—Photostat copy of the letter dt. 9-4-85 from General Manager to the President, Coril Club, Visakhapatnam with regard to man power.
- Ex. M38—Photostat copy of the affidavit of V. Brahmananda Rao President, H.P.C.L., Cafeteria Employees Union, Visakhapatnam in W.P. No. 4433/82 on the file of the High Court of Judicature, A. P. at Hyderabad.
- Ex. M39 28-7-82—Photostat copy of the High Court's Order dt. 28-7-82 in W.P.M.P. No. 6444/82.
- Ex. M40—Photostat copy of the Memorandum of Grounds of Writ Appeal in W.A. No. 811/84 against W.P. No. 4433/82.
- Ex. M41 19-3-87—Leave application form dt. 19-3-87 of S. Abel to the Manager (Cafeteria) H.P.C.L., Visakha Refinery, Visakhapatnam.
- Ex. M42 14-6-89—Leave application form dt. 14-6-89 of S. Abel to the Manager (Cafeteria) HPCL-Visakha Refinery, Visakhapatnam.
- Ex. M43 31-5-89—Leave application form dt. 31-5-89 of S. Abel to the Manager (Cafeteria) H.P.C.L.—Visakha Refinery, Visakhapatnam.
- Ex. M44 3-5-83—Leave application form dt. 3-5-83 of K. Rama Rao to the President, Visakha Refinery Catering Employees Association, Visakhapatnam.
- Ex. M45 11-1-85—Leave application form dt. 11-1-85 of K. Rama Rao to the President, Visakha Refinery Catering Employees Association, Visakhapatnam.
- Ex. M46 30-7-79—Photostat copy of the letter dt. 30-7-79 from the President, Visakha Refinery Catering Employees Association to the Assistant Manager, Personnel Relations H.P.C. Ltd. Visakhapatnam. with regard to Visakha Refinery Catering Employees Association, annual General Body meeting and election of Office Bearers and Committee Members for the year 1979-80 information submitting.
- Ex. M-47 and M-47(a) 31-7-79—Photostat copy of the letter dt. 31-7-79 from Assistant Manager, Personnel Relations to the President, Visakha Refinery Catering Employees Association Visakhapatnam with regard to consent to the Visakha Refinery Catering Employees Association for forming into a cooperative Society under the Cooperative Societies Registration Act, 1887.
- Ex. M48—Blank proforma for Requisition Form for recruitment through Employment Exchange.
- Ex. M49—Xerox copy of the Proforma of the call letter for written Test/Interview.
- Ex. M50—Xerox copy of the Proforma of the Appointment letter.
- Ex. M51—Standing Orders of Hindustan Petroleum Corporation Limited, Visakha Refinery.
- Ex. M52—Proforma of the leave application.
- Ex. M53—Proforma of Gate pass for permanent employees.
- Ex. M54—Gate Pass of Sri Shaik Sikender, Contract Employee.
- Ex. M55—Gate Pass of Sri Y. Mahalaxmi, Contract employee.
- Ex. M56 16-12-87—Letter submitted by the worker to General Manager showing amounts payable to each worker in respect of lumpsum amount of Rs. 36,000.

## Documents marked by the Consent

- Ex. X1 5-11-90—Letter issued by the E.S.I. Corporation, Hyderabad charging the code number.
- Ex. X2—Letter addressed by the Office Asst. P. F. Commission to the wife of a deceased employee.
- Ex. X3 10-7-91—Letter addressed by the Corporation/Respondent to RLC (C) Hyderabad.
- Ex. X4—Overtime allowance drawn bill.
- Ex. C1—Order of Supreme Court in Civil Appeal No. 3267(NI) of 1988 High Court W.A. No. 811/84.
- Ex. C2—Decree Order in C.A. No. 3267 (NI) of 1968.

Y. VENKATACHALAM, Industrial Tribunal-I

नई दिल्ली, 7 फरवरी, 1994

का. प्र. 645—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचन में, केन्द्रीय सरकार, उसे दिनांक 31-1-94 को प्राप्त श्री सैन्थॉक और कानटुक्टर वृद्धिधम के संबंध में उसके कर्मचारियों और नियंत्रकताओं के बीच हुए औद्योगिक विवाद के संबंध में अनुबंध में योजित औद्योगिक अधिकरण मद्रास के पंचाट को प्रस्तावित करती है।

[सं. एल.—30012/38/88—डी-III बी]

बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 7th February, 1994

S.O. 645.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (11 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Madras, as shown in the Annexure, in the industrial dispute between the employers in relation to the manage-

ment of Sh. Manuel Orrey contractor of I.O. CL and their workmen, which was received by the Central Government on the 31-1-94.

[No. L-30012/38/88-D.III(B)]  
B. M. DEV, Desk Officer

# ANNEXURE

## BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU, MADRAS

Monday, the 8th day of November, 1993

PRESENT :

THIRU K. SAMPATH KUMARAN, B.A.B.L.  
INDUSTRIAL TRIBUNAL

INDUSTRIAL DISPUTE NO. 17, 1989

(In the matter of the dispute for adjudication under Section 10(1) (d) of the Industrial Disputes Act, 1947, between the Workman and the Management of Shri Manuel Correya, Contractor of Indian Oil Corporation, Madras).

# BETWEEN

Shri G. Sekhar, No. 12, Durgadevi Nagar, II Street,  
Tondiarpet Madras-600 081.

# AND

Shri Manuel Correya, Contractor, 683, Iliruvottiyur  
High Road, Tondiarpet, Madras-600 081.

REFERENCE : Order No. L-30012/38/88-D.III(B), dated  
6-2-89, Ministry of Labour, Government  
of India, New Delhi.

This dispute coming on for a final hearing on Thursday, the 28th day of October, 1993 upon perusing the reference, Claim and Counter Statements, and all other material papers on record and upon hearing the arguments of Thiru V. Prakash, Advocate appearing for the Workman and the Management being absent and set aside, and this dispute having stood over till this day for consideration, this Tribunal made the following :—

# AWARD

This is a reference made by the Government of India, for the adjudication of the following issue :

"Whether the action of the Management of Shri Manuel Correya Contractor of Indian Oil Corporation, Madras in terminating the services of Shri G. Sekhar, ex-welder with effect from 13-12-1987 is justified ? If not, what relief is the workman entitled to ?"

2. The Petitioner filed the following Claim Statement.— The petitioner joined the service of Manuel Correya, a Contractor for Indian Oil Corporation, Installation, Tondiarpet Terminal and Indian Oil Corporation, Indian Oil Bhavan, Nungambakkam, Madras. The contract is for Welding, gas-cutting, tinkering and such other work on the lorry-tankers belonging to the Indian Oil Corporation, Installation, Tondiarpet Terminal, Madras and Indian Oil Corporation, Indian Oil Bhavan, Nungambakkam. Manuel Correya, also had contract for maintenance and repair of pumps and other storage tanks of the Indian Oil Corporation, Installation, Tondiarpet Terminal and Indian Oil Corporation, Indian Oil Bhavan, Nungambakkam for the purpose of transportation, storage of oil and other petroleum products. The petitioner joined the service of the management as a helper in the year 1979 at a daily wage of Rs. 8 and has been in continuous service till 27-1-87 when his services were arbitrarily terminated. The petitioner had worked as helper till 1979-1980, as Khalasi in 1981, as a fitter in 1982, as a tinker from 1983 to 1985, and as a Welder in the years 1986 and 1987. The petitioner was not given weekly holidays nor holidays with wages in terms of National and Festival Holidays Act. On 27-1-87, at about 8.00 a.m., when he reported for duty to the Supervisor of Respondent, Mr Kuppusamy, the petitioner was denied work and was instructed to meet Manuel Correya. When petitioner met

him at about 9.00 a.m. Manuel Correya said that as petitioner had not come for work for one week, his services stood terminated. Even though the petitioner obtained one week leave to go to his native place, by seeking permission orally, the respondent decided to terminate his services arbitrarily without any enquiry on 27-1-87. The petitioner raised an Industrial Dispute against the Indian Oil Corporation and the respondent before the Assistant Commissioner of Labour (Central) and eventually a settlement was entered into under Section 12(3) of the Industrial Disputes Act, on 4-11-87, that the petitioner will be reinstated with continuity of service, but, without wages from 27-1-87 to 4-11-87. The petitioner was reinstated pursuant to the settlement but was refused employment from 12-12-87. It is void ab-initio for failure of notice or pay in lieu thereof and non-payment of retrenchment compensation prior to termination. The impugned termination being retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act. The same is void for violation of the conditions laid down in Section 25-N and in any event of Section 25(F). The impugned termination is a violation of principles of natural justice. The allegations against the petitioner are false, and the termination is really one of victimisation. Therefore, an award may be passed directing the respondent to re-instate the petitioner with back wages, continuity of service, and other attendant benefits.

3. Though the respondent filed the following Counter, the respondent remained absent subsequently and was set aside.

4. The respondent is a petty contractor executing works like fitting, tinkering welding etc. by his and starts and not continuously. The respondent employed skilled and unskilled workmen on daily rated wages for the execution of the work allotted to the respondent by the Indian Oil Corporation on piece rates. The petitioner was not a skilled workman. In the course of his employment, he picked up tinkering and was allotted tinkering work as and when the respondent had to execute such work. When there is no tinkering work, the petitioner had no work. On 12-12-1987, the respondent was not having any tinkering work and the petitioner was allotted some other work without affecting his emoluments. The petitioner refused to accept and do the allotted work but went away. He did not turn up for work subsequently. There was no termination of his service but only abandonment. Therefore, the petitioner has no right to raise an Industrial Dispute. The petitioner was in service from November, 1985 to January, 1987 and not from 1979 to January 1987. He had not put in 240 days of continuous service in any calendar year. Therefore, the Industrial Dispute may be dismissed.

5. The issue that arises for consideration is :

Whether the petitioner is entitled to reinstatement with all benefits as prayed for ?

Issue : The petitioner in his evidence stated that the respondent is a Contractor in the Indian Oil Corporation, that he (Petitioner) joined service of the respondent in 1979, worked continuously till 27-1-1987, that he was removed from service on 27-1-87, that he raised an Industrial Dispute before the Assistant Labour Commissioner that there was an agreement under Section 12(3) (Exhibit W-1) by which he was reinstated, but stopped from work from 12-12-1987. The petitioner has also filed the petition filed by him before the Assistant Commissioner of Labour (Ex. W-2). The failure report sent by the Assistant Commissioner of Labour has been marked as Ex.W4. A letter addressed by the Petitioner to the respondent dated 19-12-1989, has been marked as Ex.W-5. The petitioner stated that he was given no notice before terminating his service, nor was he paid the notice pay for one month or any retrenchment compensation. He also stated that there was no enquiry against him prior to this. There is no evidence to the contra and his evidence has to be accepted as such. The allegation in the respondent's counter that it is the petitioner who abandoned the service has not been established. Therefore, the termination of the petitioner from service without any notice, enquiry or notice-pay or retrenchment compensation is not justified and cannot be sustained. Therefore, the petitioner has to be reinstated with back wages and other attendant benefits from 13-12-87.

In the result, an award is passed directing the respondent to reinstate the petitioner to service with back wages, continuity of service and other attendant benefits. No costs

Dated, this the 8th day of November, 1993  
THIRU K. SAMPATH KUMARA, Industrial Tribunal  
WITNESSES EXAMINED

For Workman :

W.W. 1 : Thiru G. Sekhar, (Petitioner-Workman).

For Management : None.

DOCUMENT MARKED

For Workman :

Ex. W-1/4-11-87 : Memorandum of settlement u/s. 12(3) of the Industrial Disputes Act, 1947 between parties (copy).

Ex. W-2/20-1-88 : Letter from Petitioner Workman to the Assistant Labour Commissioner (Central), Madras (copy).

Ex. W-3/25-7-88 : Statement filed by the Petitioner-workman before the Assistant Labour Commissioner (Central), Madras (copy).

Ex. W-4/30-9-88 : Conciliation failure report (copy).

Ex. W-5/19-12-89 : Letter from Petitioner-Workman to the Respondent-Contractor, (copy).

For Management : Nil.

नई दिल्ली, 7 फरवरी, 1994

का. प्रा. 646—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उसे दिनांक 1-2-94 को प्राप्त ओ एन जा. सी. प्रबंधन के संबंध में उनके कर्मचारों और नियोजताओं के बीच हुए औद्योगिक विवाद के संबंध में अनुबंध में यथावत केन्द्रीय सरकार औद्योगिक अधिकरण जयपुर के पंचाट की प्रकाशित करती है।

[सं. एल. 30012/20/90-आई और विविध]

बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 7th February, 1994

S.O. 646.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of ONGC and their workmen, which was received by the Central Government on the 1-2-94.

[No. I-30012/20/90-IR(Misc.)]

B. M. DAVID, Desk Officer

अनुबन्ध

केन्द्रीय औद्योगिक न्यायाधिकरण जयपुर

केस नं. सी. आई. टी. 27/91

रैफरेंस:—केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्रमांक एल-30012/20/90 आई और विविध दिनांक 5-4-91

हरिसिंह पुत्र श्री रेवतसिंह द्वारा राजस्थान बैंक एम्प्लॉईज यूनियन माधीवाग, जोधपुर।

—प्राथी

बनाम

जमरन मैनेजर, ग्रोवल एंड नेचुरल गैस कमीशन उल्मेद निवास रातनाहा, जोधपुर

उपस्थिति

—अप्राथी

माननीय न्यायाधीश श्री शंकर लाल जैन, और एच. जे. एस

प्राथी की ओर से

श्री जे. एल. शाह

अप्राथी की ओर से

श्री एल. डी. चतुर्वेदी

दिनांक अवाई

27-11-93

अवाई

भारत सरकार, श्रम मंत्रालय, नई दिल्ली ने अपने उपरोक्त आदेश द्वारा निम्न विवाद इस न्यायाधिकरण को वास्ते अधिनियम औद्योगिक विवाद अधिनियम 1947 की धारा 10(1) (घ) के अन्तर्गत प्रेषित किया है ;

“Whether the management of Oil and Natural Gas Commission employed Shri Hari Singh s/o Shri Renwan Singh as a labourer in their establishment in the district of Jaisalmer (Rajasthan) for the period from 25-12-82 to 30-9-87 under his own name and also under different fictitious names and also as to whether the termination of his employment with effect from 1-10-87 is just and legal ? If not, to what relief is the workman concerned entitled ?”

2. प्राथी श्रमिक श्री हरि सिंह ने अपना दावा अप्राथी तेल व गैस आयोग के विरुद्ध दिनांक 29-5-91 को इस आधार पर संस्थित किया है कि उसे विपक्षी द्वारा 25-12-81 को नौकरी पर रखा गया था और उसने अपने स्वयं के वास्तविक नाम से तथा बदले हुए नामों से 12 माह की अवधि में 240 दिवस से अधिक कार्य किया और उसने 30-9-87 तक कार्य किया और उसे विपक्षी द्वारा 30-9-87 को नौकरी से निकाल दिया गया और उसे कोई छुट्टी मुआवजा तथा नोटिस अथवा नोटिस के एवज में एक माह का वेतन नहीं दिया गया। इस प्रकार धारा 25-एफ अधिनियम 1947 के प्रावधानों को विपक्षी द्वारा अवहेलना की गई है।

3. प्राथी ने समस्त लाभों सहित पुनः नौकरी में बहाल किये जाने की प्रार्थना की है।

4. अप्राथी की ओर से वादीतर दिनांक 2-7-92 को प्रस्तुत कर प्राथी के दावों को पूर्णतः अस्वीकार किया है और यह कथन किया है कि प्राथी लगातार 12 माह में 240 दिवस कभी आयोग में नियोजित नहीं रहा। इसके साथ साथ अन्य वैधानिक आपत्तियाँ उठाई हैं कि प्राथी ने बनावटी नामों से एवं बदले हुए नामों से जो कार्य किया है वह अपराधिक कृत्य की श्रेणी में आता है।

5. प्राथी ने दिनांक 8-9-92 को रीजोइन्डर प्रस्तुत कर प्रकट किया है कि आकस्मिक श्रमिकों को भी अधिनियम के अन्तर्गत श्रमिक ही माना है तथा विपक्षी संस्थान उद्योग की परिभाषा में आता है। अप्राथी ने प्राथी द्वारा प्रस्तुत रीजोइन्डर के संबंध में भी आपत्ति उठाई है।

6. वाद के संबंध में प्राथी हरिसिंह के अवावा श्री हनुमान सिंह को परीक्षित कराया गया है प्रालेखीय सबूत में प्रदर्श डब्ल्यू 1 लगातार डब्ल्यू-47 फोटो प्रतियाँ पेश की हैं। यह उल्लेखनीय है कि उक्त प्रतियाँ किसी से प्रमाणित नहीं कराई गई हैं अप्राथी की ओर से साक्ष्य में विपक्षी के उप निदेशक वित्त एवं लेखा श्री मांगीलाल टेलर को परीक्षित कराया गया है।

7. पक्षकारन के सुयोग्य प्रतिनिधिगण की बहस सुनी गई एवं तथ्यों व विधि की स्थिति का ध्यानपूर्वक परिशीलन किया गया।

8. प्राथी के विद्वान प्रतिनिधि ने अपनी दलीलों के समर्थन में निम्न न्याय दृष्टान्तों का आश्रय लिया ;

(क) 1990 टी. एल. एल. एन. पेज 1054 (एस. सी.) पंजाब लैंड डेवेलपमेंट एंड रोकलेशन कारपोरेशन लि. चंडीगढ़ बनाम लेबर कोर्ट चंडीगढ़।

2. 1986 (टी) एल. एल. जे. पेज 127 (एस. सी.) श्री एच. डी. सिंह बनाम रिजर्व बैंक आफ इंडिया।

3. 1993 लैब आई. सी. 1135 (माननीय कर्नाटक उच्च न्यायालय (उमेश एस. नाईक बनाम बी. कर्नाटक) फुड एंड सिविल सप्लाय कारपोरेशन लि.)

9. अप्राथी के विद्वान प्रतिनिधि ने अपनी दलीलों के समर्थन में निम्न न्याय दृष्टान्त प्रस्तुत किये :

1. जे.टी. 1992 (1) एस. सी. 394, दिल्ली डेवेलपमेंट हॉर्टीकल्चर एम्प्लॉयज यूनियन बनाम दिल्ली एडमिनिस्ट्रेशन दिल्ली व अन्य ।
2. एफ. जे. आर. (81) 1992 पेज 107, कृष्ण मुखारी प्रताप बनाम इलाहाबाद बैंक व अन्य (माननीय नटना उच्च न्यायालय)
3. केन्द्रिय औद्योगिक न्यायाधिकरण जयपुर का अर्वाइ दिनांक 1-5-89 केस नं. आई. टी. 40/87, श्री किशन सिंह पंवार बनाम डा. महाप्रबन्धक तेल एवं प्राकृतिक गैस आयोग राजस्थान परिव्योचना 4 जयपुर व अन्य ।
10. यह उल्लेखनीय है कि यह विवाद राजस्थान बैंक एम्प्लॉयज यूनियन जोधपुर द्वारा उठाया गया था किन्तु यूनियन के किसी पदाधिकारी को परीक्षित नहीं किया गया है और न ही यूनियन के किसी पदाधिकारी द्वारा दावा हो प्रस्तुत किया गया है। इस मामले में सारी कार्यवाही प्रार्थी श्रमिक ने स्वयं की है।
11. यह औद्योगिक विवाद न्याय निर्णय हेतु इस न्यायाधिकरण समक्ष दिनांक 16-4-91 को प्रस्तुत हुआ। श्रम आयुक्त के समक्ष यह विवाद उठाने के संबंध में प्रार्थी श्रमिक द्वारा कोई प्रलेख या असफल दावा प्रतिवेदन प्रस्तुत नहीं किया गया है।
12. प्रार्थी श्रमिक ने कथन किया है कि उसने माह दिसम्बर 1981 से अप्रैल 1982 तक सही नाम से कार्य किया था। उसका यह कथन नहीं है कि उसने अपने सही नाम से एक कलेंडर वर्ष में 240 दिवस या उससे अधिक दिवस तक लगातार विपक्षी संस्थान में कार्य किया हो।
13. प्रार्थी श्रमिक ने यह कथन किया है कि उसने वर्ष 1982 के के बाद बीच बीच में अपना नाम बदलकर होरासिंह, लेखासिंह, कानसिंह, हिमवतसिंह, इन्द्रसिंह, गुलाबसिंह, माथुराम, भंवरसिंह, भरतसिंह, नरपतसिंह, खामानसिंह, बालूसिंह, भाषू सिंह आदि नामों से कार्य किया था और उसका यह कथन है कि उसे 30-9-87 को मौखिक आदेशों से सेवा मुक्त कर दिया। उसने यह भी कथन किया है कि उसने टाईपिस्ट का कार्य किया था और प्रलेख डब्ल्यू-1 से डब्ल्यू-47 उसी ने टाईप किये हैं।
14. यह उल्लेखनीय है कि प्रार्थी श्रमिक ने नियुक्ति के संबंध में तो कोई नियुक्ति पत्र पेश किया है और न ही सेवा से हटाने का सेवा मुक्ति आदेश पेश किया है। उसका कथन है कि उसको अखंडदान आई. सी. आई. के कहने से श्री नेगी ने नियुक्ति दी किन्तु इन दोनों ही व्यक्तियों को श्रमिक ने साक्ष्य में पेश नहीं किया है। यह भी उल्लेखनीय है कि प्रार्थी श्रमिक द्वारा प्रस्तुत किये गए प्रलेखों को प्रमाणित करने के लिए किसी संबंधित व्यक्ति को साक्ष्य में प्रस्तुत नहीं किया गया है और न ही उसके मूल दस्तावेजात ही मंगाये गये हैं। इन फोटों स्टेट प्रतियों को प्रमाणित मानने का कोई समुचित आधार नहीं है। प्रार्थी श्रमिक का कथन है कि उसे मस्टरोल पर श्रमिक के तौर पर नियुक्ति किया गया था। उसने ऐसे कोई प्रलेख या सबूत पेश नहीं किया है कि उसने साक्षी के अधीन 240 दिवस या उससे अधिक कार्य किया हो। यद्यपि प्रार्थी के एक साक्षी हनुमान सिंह को परीक्षित किया गया है किन्तु उसने भी स्पष्टतः यह कथन नहीं किया है कि उसने प्रार्थी श्रमिक को 240 दिन या उससे अधिक विपक्षी संस्थान में कार्य

करते हुए देखा हो। प्रार्थी श्रमिक ने कथन किया है कि वह दैनिक वेतन भागी श्रमिक के रूप में मस्टरोल पर कार्य करता था। विपक्षी संस्थान के साक्षी मांगीलाल टेलर ने यह प्रमाणित किया है कि अकुशल कर्मचारियों की अर्ती एम्प्लॉयमेंट एक्सचेंज एक्ट 1959 के प्रावधानों के अनुसार की जाती थी तथा अस्थायी एवं कुशल कर्मचारियों की सेवा अस्थायी आदेश अधिनियम के अनुसार नियमित की जाती है। ग्रामाण क्षेत्रों में बेरोजगार व अकुशल कर्मचारियों को कोई काम नहीं है, इस कारण आयोग द्वारा समय-समय पर प्रार्थी को नाम बदलकर रखने का कोई आधार नहीं था। आकस्मिक कर्मकार तथा बदली कर्मकार के रूप में भी श्रमिक द्वारा एक कलेंडर वर्ष में 240 दिवस या उससे अधिक समय विपक्षी संस्थान में कार्य किया जाना प्रमाणित नहीं हुआ है। प्रार्थी को जुदावा साक्ष्य का खंडन विपक्षी के साक्षी मांगी लाल टेलर के बयानों से हुआ है जिन्होंने कथन किया है कि प्रार्थी श्रमिक द्वारा 240 दिवस कार्य करना रिकार्ड के आधार पर प्रमाणित हो नहीं है। प्रार्थी श्रमिक को और से कोई मस्टरोल आदि पेश नहीं कराये गये हैं जिससे यह प्रमाणित हो सकत कि प्रार्थी श्रमिक ने वास्तव में अप्रार्थी के वहां कितनी अवधि तक कार्य किया। प्रार्थी ने दावे के साथ जो अनक्सचर-I प्रस्तुत किया था, उसे प्रमाणित नहीं किया है, और उसके अनुसार भी प्रार्थी श्रमिक द्वारा 240 दिन या उससे अधिक एक कलेंडर वर्ष में विपक्षी के अधीन कार्य करना प्रमाणित नहीं होता है। प्रार्थी ने नये व बनावटी नामों से कार्य करना बताया है, इस संबंध में भी कोई सुदृढ़ प्रमाण प्रस्तुत नहीं किया है और अगर प्रार्थी ने छलपूर्वक बनावटी या बदले हुए नाम से कोई कार्य किया है उसका लाभ वह प्राप्त करने का अधिकारी हो ही नहीं सकता।

15. निष्कर्ष यह है कि प्रार्थी श्रमिक का यह कथन विश्वसनीय नहीं है कि उसने विपक्षी के अधीन किसी कलेंडर वर्ष में 240 दिवस अथवा उससे अधिक कार्य किया हो। इस प्रकार प्रार्थी अपना दावा प्रमाणित करने में सफल नहीं रहा है। अतः तथ्यों और विधि के उपरोक्त समस्त कारणों से इस निर्देश का अधिनियम निम्न प्रकार किया जाता है:

“आयल एवं नेचुरल गैस कमीशन, जिला जैसलमेर के प्रबन्धन द्वारा उनके श्रमिक श्री हरिसिंह पुत्र श्री रणवन्तसिंह की सेवाएं दिनांक 1-10-87 से समाप्त किया जाना उचित एवं वैध है। श्रमिक किसी राहत व राशि का अधिकारी नहीं है।”

16. अर्वाइ की प्रति केन्द्र सरकार को प्रकाशनार्थ अधिनियम 1947 की धारा 17 (1) के अन्तर्गत भिजवाई जावे।

शंकर लाल जैन, पीठासीन अधिकारी

नई दिल्ली, 10 फरवरी, 1994

का०आ० 647.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उसे दिनांक 1-2-94 को प्राप्त ओ०एन०जी०सी० प्रबंध के संबंध में उनके कर्मकारों और नियोक्ताओं के बीच हुए औद्योगिक विवाद के संबंध में अनुबंध में यथोक्त केन्द्रीय सरकार औद्योगिक अधिकरण जयपुर के पचाट को प्रकाशित करती है।

[सं० एल-30012/27/90-आई०आर० (विविध)]

बी० एम० डेविड, डेस्क अधिकारी

New Delhi, the 10th February, 1994

S.O. 647.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the Industrial Dispute between the employees in relation to the management of Oil & Natural Gas Commission and their workmen, which was received by the Central Government on 1-2-1994.

[No. I-30012/27/90-JR (Misc.)]

B. M. DAVID, Desk Officer

#### अनुबन्ध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं० सी०आई०टी० 28/91

रेफरेंस : एल-30012/27/90 आई०आर० विविध दिनांक 27-3-91 केन्द्र सरकार श्रम मंत्रालय, नई दिल्ली का उपरोक्त आदेश।

चानन खां पुत्र श्री हाकिम खां द्वारा राजस्थान बैंक एम्प्लॉईज यूनियन, परवाना भवन, माधोबाग, जोधपुर —प्रार्थी

#### बनाम

जनरल मनेजर, आयल एंड नेचुरल गैस कमीशन, उम्मेद निवास, रतनाड़ा, जोधपुर. —अप्रार्थी

#### उपस्थित

माननीय न्यायाधीश श्री शंकर लाल जैन, आर०एच०जे०एस०

प्रार्थी की ओर से : श्री जी०एल० शाह  
अप्रार्थी की ओर से : श्री एम०डी० चतुर्वेदी  
दिनांक अर्वाइ : 27-11-93

#### अर्वाइ

केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली ने अपने उपरोक्त आदेश के जरिये निम्न विवाद इस न्यायाधिकरण को वास्ते अधिनिर्णय औद्योगिक विवाद अधिनियम 1947 जिसे तत्पश्चात् अधिनियम 1947 संबोधित किया है की धारा 10(1)(घ) के अन्तर्गत प्रेषित किया है :

'whether the management of oil and natural Gas Commission employed Shri Chanan Khan S/o Shri Hakim Khan as a labourer in their establishment in the district of Jaisalmer (Rajasthan) for the period from 19-9-1984 to February, 1987 under his own name and also under different fictitious names and also as to whether the termination of his employment w.e.f. 1-3-1987 is just and legal? If not, to what relief is the workman concerned entitled ?'

2. प्रार्थी श्रमिक श्री चानन खां ने अपना दावा अप्रार्थी तेल व गैस आयोग के विरुद्ध दिनांक 29-5-91 को इस आधार पर संस्थित किया है कि उसे विपक्षी द्वारा 19-9-84 को नौकरी पर रखा गया था और उसने अपने स्वयं के वास्तविक नाम से तथा बदले हुए नामों से 12 माह की अवधि में 240 दिन में अधिक कार्य किया और उसने विपक्षी के यहाँ फरवरी 1987 तक कार्य किया। फरवरी 1987 में उसे विपक्षी द्वारा नौकरी से निकाल दिया गया और उसे कोई छुट्टी म्रावजा तथा नोटिस अथवा नोटिस के एवज में एक माह का वेतन नहीं दिया गया। इस प्रकार धारा 25-एफ अधिनियम 1947 के प्रावधानों की विपक्षी संस्थान द्वारा अवहेलना की गई है।

3. प्रार्थी ने समस्त लाभों सहित पुनः सेवा में बहाल किये जाने की प्रार्थना की है।

4. अप्रार्थी की ओर से वादांतर दिनांक 2-7-92 को प्रस्तुत कर प्रार्थी के दावे को पूर्णतः अस्वीकार करने हुए यह कथन किया है कि प्रार्थी लगभग 12 माह में 240 दिन कभी भी नियोजित नहीं रहा। इसके साथ-साथ अन्य वैधानिक आपत्तियां भी उठाई गई हैं कि प्रार्थी ने बनावटी नामों से एवं बदले हुए नामों से जो कार्य किया है अपराधिक कृत्य की श्रेणी में आता है।

5. प्रार्थी ने दिनांक 8-9-92 को रीजोइन्डर प्रस्तुत कर प्रकट किया है कि आकस्मिक श्रमिकों को भी अधिनियम के अन्तर्गत श्रमिक ही माना गया है तथा विपक्षी संस्थान उद्योग की परिभाषा में आता है जिसके संबंध में भी अप्रार्थी ने आपत्ति उठाई है।

6. वाद के संबंध में प्रार्थी चानन खां के अलावा श्री हनुमान सिंह को परीक्षित किया गया है। अप्रार्थी की ओर से साक्ष्य में विपक्षी के उपा निदेशक श्री मांगी लाल टेलर को परीक्षित कराया गया है। तत्पश्चात् मैने पञ्चकारान् के प्रतिनिधिगण को बहम विस्तार पूर्वक सुनी। पत्रावली, पत्रावली पर उलब्ध साक्ष्य एवं साक्ष्य तथा विधि के सुसंगत प्रावधानों का ध्यानपूर्वक परीक्षित किया।



8. प्रार्थी के विद्वान प्रतिनिधि ने अपनी दलीलों के समर्थन में निम्न न्याय दृष्टान्तों का आश्रय लिया :

1. 1990 T एल०एल०एन० पेज 1054 (एस०सी०) पंजाब लैंड एंड डेवलपमेंट एवं रीक्लेमेशन कॉर्पोरेशन लि० चण्डीगढ़ बनाम लेबर कोर्ट चण्डीगढ़ ।
2. 1986 T एल०एल०जे० पेज 127 (एस०सी०) श्री एच०डी० मिह बनाम रिजर्व बैंक आफ इंडिया ।
3. 1993 लैब० आई०सी० 1135 (माननीय कर्नाटक उच्च न्यायालय) उमेश एस० नार्डक बनाम दी कर्नाटका फूड एंड मिविल सप्लायज कॉर्पोरेशन लि० ।

9. अप्रार्थी के विद्वान प्रतिनिधि ने अपनी दलीलों के समर्थन में निम्न न्याय दृष्टान्त प्रस्तुत किये :

1. जे०टी० 1992 (एस०सी०) 395- दिल्ली डेवलपमेंट एम्पलाईज यूनियन बनाम दिल्ली प्रशासन दिल्ली व अन्य ।
2. एफ०जे०आर० (81) 1992 पेज 107, कृष्ण मुरारी प्रसाद बनाम अलाहबाद बैंक व अन्य (माननीय पटना उच्च न्यायालय) ।
3. केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर का अर्वाइ दिनांक 1-5-89 केस न० आई०टी० 40/87 श्री किशनसिंह पंवार बनाम उप महाप्रबन्धक तेल एवं प्राकृतिक गैस आयोग राजस्थान परियोजना 3 जोधपुर व अन्य ।

10. यह उल्लेखनीय है कि यह विवाद राजस्थान बैंक एम्पलाईज यूनियन जोधपुर द्वारा उठाया गया है किन्तु यूनियन के किसी पदाधिकारी को परीक्षित नहीं किया गया है और ना ही यूनियन के किसी पदाधिकारी द्वारा दावा ही प्रस्तुत किया गया है। इस मामले में सारी कार्यवाही प्रार्थी श्रमिक ने स्वयं की है।

11. यह औद्योगिक विवाद न्याय निर्णय हेतु इस न्यायाधिकरण के समक्ष दिनांक 16-4-91 को प्रस्तुत हुआ। श्रम आयुक्त के समक्ष यह विवाद उठाने के संबंध में प्रार्थी श्रमिक द्वारा कोई प्रलेख या असफल बार्ता प्रतिवेदन प्रस्तुत नहीं किया गया है।

12. प्रार्थी श्रमिक ने कथन किया है कि उसने वर्ष 1983 से सितम्बर 1984 तक अपने सही नाम से विपक्षी संस्थान में कार्य किया उसके बाद उसे डिलिंग सैक्शन में भेज दिया गया जहां उसका नाम बदलकर लालू खां लिखा गया और फिर उसने अन्य नामों काल्गाम, हनीफ खां अकबर खां, जीवन खां, अशकल्ली खां, हफी खां आदि नामों से कार्य किया प्रार्थी श्रमिक का यह कथन नहीं है कि उसने अपने सही नाम से एक कलैण्डर वर्ष में 240 दिन से अधिक कार्य किया हो, उसका यह भी कथन है कि उसे दिनांक

फरवरी 1987 को मौखिक आदेश द्वारा सेवा मुक्त कर दिया और सेवा मुक्ति का कोई कारण नहीं बताया। सेवा मुक्ति से पूर्व कोई नोटिस, नोटिस पे अथवा छंटनी का सूत्रावज्ञा नहीं दिया।

14. यह उल्लेखनीय है कि प्रार्थी श्रमिक ने नियुक्ति के संबंध में न तो कोई नियुक्ति आदेश प्रस्तुत किया है और न ही सेवा मुक्ति आदेश। यह भी उल्लेखनीय है कि प्रार्थी श्रमिक द्वारा अपने दावे के समर्थन में किसी प्रकार का कोई दस्तावेज प्रस्तुत नहीं किया गया है जिससे यह प्रमाणित हो सके कि उसने वर्ष 1983 से 1984 तक एक कलैण्डर वर्ष में 240 दिवस या उससे अधिक विपक्षी संस्थान में कार्य किया हो। यद्यपि प्रार्थी के एक साक्षी हनुमान सिंह को परीक्षित किया गया है किन्तु उसने भी स्पष्टतः यह कथन नहीं किया है कि उसने प्रार्थी को विपक्षी संस्थान में 240 या उससे अधिक दिवस तक कार्य करते देखा हो। प्रार्थी श्रमिक का कथन है कि वह दैनिक वेतन भोगी श्रमिक के रूप में मस्टरोल पर कार्य करता था। विपक्षी संस्थान के साक्षी मांगीलाल टेलर ने यह प्रमाणित किया है कि अकृष्ण श्रमिकों को भर्ती एम्पलायमेंट एक्सचेंज एक्ट 1959 के प्रावधानों के अनुसार की जाती थी तथा अस्थायी एवं अकृष्ण कर्मचारों की सेवा स्थाई आदेशों व अधिनियम के अनुसार नियमित की जाती है। ग्रामीण क्षेत्रों में बेरोजगार व अकृष्ण कर्मचारों की कोई कमी नहीं है, इस कारण अयोग्य द्वारा, समय-समय पर प्रार्थी को नम बदलकर रखने का कोई आधार ही नहीं था। प्राकृतिक कर्मकार तथा बदली कर्मकार के रूप में भी श्रमिक द्वारा, एक कलैण्डर वर्ष में 240 दिवस या उससे अधिक कार्य किया जाना प्रमाणित नहीं हुआ है। प्रार्थी की ज्वारी साक्ष्य का खण्डन विपक्षी के साक्षी श्री मांगीलाल टेलर के बयानों से हुआ है जिन्होंने कथन किया है कि प्रार्थी श्रमिक द्वारा 240 दिवस एक कलैण्डर वर्ष में कार्य करना रिकार्ड के आधार पर प्रमाणित ही नहीं हुआ है। प्रार्थी श्रमिक की ओर से कोई मस्टरोल आदि पेश नहीं कराये गये हैं जिससे यह प्रमाणित हो सकता कि प्रार्थी श्रमिक ने वास्तव में अप्रार्थी के यहां कितनी अवधि तक कार्य किया। प्रार्थी ने दावे के साथ जो अनैकस्वर प्रस्तुत किया था उसे प्रमाणित नहीं किया है और उसके अनुसार भी प्रार्थी श्रमिक द्वारा 240 दिन या उससे अधिक एक कलैण्डर वर्ष में विपक्षी के अधीन कार्य करना प्रमाणित नहीं होता है। प्रार्थी ने नये व बनावटी नामों से कार्य करना बताया है, इस संबंध में भी कोई सुदृढ़ प्रमाण प्रस्तुत नहीं किया है और अगर प्रार्थी ने छलपूर्वक बनावटी या बदले हुए नाम से कोई कार्य किया है तो उसका लाभ वह प्राप्त करने का अधिकारी नहीं हो सकता।

15. निष्कर्ष यह है कि प्रार्थी श्रमिक का यह कथन विपक्षनीय नहीं है कि उसने विपक्षी के अधीन किसी कलैण्डर वर्ष में 240 दिवस अथवा उससे अधिक कार्य किया हो। इस प्रकार प्रार्थी अपना दावा प्रमाणित करने में सफल नहीं रहा है। अतः तथ्यों और विधि के उपरोक्त समस्त कारणों

में इस निर्देश का अधिनिर्णय निम्न प्रकार किया जाता है :

“अंशक एवं नेचुरल गैस कमीशन, जिन्हा जमखदेर के प्रबंधन द्वारा उनके श्रमिक श्री चानन खां पुत्र श्री हकीम खां की सेवाएं दिनांक 1-3-87 में समाप्त किया जाना उचित एवं वैध है। श्रमिक किसी गृह न राशि का अधिकारी नहीं है।”

17. उक्त आशय का अवार्ड पारित किया जाना है जो केन्द्र सरकार को प्रकाशनार्थ नियमानुसार भेजा जावे।  
शंकर लाल जैन, पीठासीन अधिकारी

नई दिल्ली, 15 फरवरी, 1994

का० आ० 648:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, उसे दिनांक 9-2-94 को प्राप्त इण्डियन रे परार्थस लि० प्रबंधन के संबंध में उनके कर्मकारों और नियोक्ताओं के बीच हुये औद्योगिक विवाद के संबंध में अनुबंध में यथोक्त औद्योगिक अधिकरण ओडीसा के पंचाट को प्रकाशित करती है।

[सं० एल-29012/65/91-आई०आर० विविध]  
बी०एम० डेविड डेस्क, अधिकारी

New Delhi, the 15th February, 1994

S.O. 648.—In pursuance of Section 17 of the Industrial Disputes Act 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Orissa, Bhubaneswar as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Indian Rare Earths Ltd., and their workmen, which was received by the Central Government on 9-2-94.

[No. 1-29012/165/91-IR(Misc.)]  
B. M. DAVID, Desk Officer

#### ANNEXURE

INDUSTRIAL TRIBUNAL, ORISSA BHUBANESWAR  
PRESENT :

Sri R. K. Dash, LL.B.,  
Presiding Officer,  
Industrial Tribunal,  
Orissa, Bhubaneswar.

Industrial Dispute case No. 13 of 1993 (Central)  
Dated, Bhubaneswar, the 29th January, 1994

BETWEEN :

The management of M/s. Indian Rare Earths Ltd.,  
(OSCOM), Chhatrapur, Dist. : Ganjam.

... First party—Management.

AND

Their workmen represented through Rare Earth Employees Union (OSCOM), P.O Matikhalo, Dist. : Ganjam.

... Second party—workmen.

APPEARANCES :

Sri S. K. Patra, Asst. Manager (Personnel)—For the first party—management.

Sri A. K. Choudhary, General Secretary of the Union  
—For the second party—workmen.

#### AWARD

The Government of India in the Ministry of Labour in exercise of the powers conferred upon it by clause (d) of sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), have referred the following dispute for adjudication by this Tribunal vide their Order No. L-29012/65/91-IR(Misc.) dt. 19-3-93 :—

“Whether the action of the management of Indian Rare Earth Ltd., is justified in not granting E.L. to the employees who were appointed as trainees in their (Mining) establishment for the training period ? If not, to what relief they are entitled ?”

2. This case was posted to 24-1-94 for filing written statement by the management. On that day both the parties by filing a memo stated that they have already compromised the dispute out of the Court and prayed that in view of the settlement a no dispute award may be passed. They have also filed the memorandum of settlement entered into between them before the Asst. Labour Commissioner(C) & Conciliation Officer, Bhubaneswar. The workmen's representative submitted that since all the disputes have been amicable resolved by tripartite settlement a no dispute award may be passed.

3. In view of the submissions as aforesaid a no dispute award is passed in so far as the present reference is concerned.

Dictated & corrected by me.

R. K. DASH, Presiding Officer

नई दिल्ली, 15 फरवरी, 1994

का० आ० 649:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, उसे दिनांक 9-2-94 को प्राप्त इण्डियन रे परार्थस लि० प्रबंधन के संबंध में उनके कर्मकारों और नियोक्ताओं के बीच हुये औद्योगिक विवाद के संबंध में अनुबंध में यथोक्त औद्योगिक अधिकरण ओडीसा के पंचाट को प्रकाशित करती है।

[सं० एल-29012/49/91-आई०आर० (विविध)]  
बी०एम० डेविड, डेस्क अधिकारी

New Delhi, the 15th February, 1994

S.O. 649.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Orissa, Bhubaneswar as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Indian Rare Earths Ltd., and their workmen, which was received by the Central Government on 9-2-94.

[No. 1-29012/49/91-IR(Misc.)]

B. M. DAVID, Desk Officer

#### ANNEXURE

INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR  
PRESENT :

Sri R. K. Dash, LL.B.,  
Presiding Officer,  
Industrial Tribunal,  
Orissa, Bhubaneswar.

Industrial Dispute case No. 32 of 1992 (Central)  
Dated, Bhubaneswar, the 29th January, 1994

BETWEEN :

The management of M/s. Indian Rare Earth Ltd.,  
(OSCOM), Chhatrapur, Dist. Ganjam.  
....First party—management.

AND

Their workmen represented through Rare Earth Employees Union (OSCOM), P.C. Matikhalo, Dist : Ganjam.

....Second party—workmen.

APPEARANCES :

Sri S. K. Patra, Asst. Manager (Personal)—For the first party—management.

Sri A. K. Choudhury, General Secretary of the Union—For the second party—workmen.

AWARD

The Government of India in the Ministry of Labour in exercise of the powers conferred upon it by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), have referred the following dispute for adjudication by this Tribunal vide their Order No. 29012/49/91-IR(Misc.) dated 3-7-92 :—

“Whether the action of Indian Rare Earth Ltd., (OSCOM), Unit Chhatrapur is justified in granting 12 days festival leave to its employees when it is granting 16 days holidays at its Bombay unit ? If not, to what relief the workmen are entitled to ?”

2. This case was posted to 24-1-94 for hearing. On that day both parties filed a joint petition alongwith a copy of the memorandum of settlement arrived at between them and prayed to dispose of the case by passing a no dispute award.

3. Perused the petition and the tri-partite settlement arrived at between the parties. The workmen's representative submitted that since all the dispute have been amicably resolved by a tri-partite settlement a no dispute award may be passed. In view of the submissions as aforesaid a no dispute award is passed in so far as the present reference is concerned.

Dictated &amp; corrected by me.

R. K. DASH, Presiding Officer

नई दिल्ली, 15 फरवरी, 1994

का. आ. 650.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, उसे दिनांक 9-2-94 को प्राप्त मै. सेटी ट्रांसपोर्ट ठेकेदार प्रबंधन के संबंध में उनके कर्मकारों और नियोजकों के बीच औद्योगिक विवाद के संबंध में अनुबंध में यथोक्त औद्योगिक अधिकरण ओडीसा के पंचाट को प्रकाशित करती है।

[सं. एल-26011/10/88-डी-III-बी)]

बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 15th February, 1994

S.O. 60.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Orissa, Bhubaneswar as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Sethy Transport, Contractor and their workmen, which was received by the Central Government on 9-2-94.

[No. L-26011/10/88-D.III(B)]

B. M. DAVID, Desk Officer

ANNEXURE

INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

PRESENT :

Sri R. K. Dash, I.L.B.,  
Presiding Officer,  
Industrial Tribunal,  
Orissa, Bhubaneswar.  
Industrial Dispute case No. 41 of 1992 (Central)

Dated, Bhubaneswar, the 1st February, 1994

BETWEEN :

The management of M/s. Orissa Mineral Development Co. Ltd., P.O. Bhadrashahi, Via, Barbil, Dist : Keonjhar.

....First party—management.

AND

Their workmen represented through Barbil Workers Union, P.O. Bolani, Dist. Keonjhar.

....Second party—workmen.

APPEARANCES :

None—For both the parties.

AWARD

None—For both the parties.

The Government of India in the Ministry of Labour in exercise of the powers conferred upon it by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication by this Tribunal vide their Order No. L-26011/10/88-D.III(B) dt. 7-8-92 :—

“Whether the demand of the union for issue of letter of appointment to the departmentalised workers w.e.f. 1-1-86, who were earlier working with the Contractor M/s. Sethy Transport is lawful and justified ? If so, to what relief are the workmen entitled to ?”

2. 20-11-93 being the date of hearing, both parties remained absent and did not take any steps. Despite of registered notice the workmen have not yet filed their statement of claims. From the conduct of the parties, it appears that they are more interested in the 'lis'. There having no material to answer the reference in either way, I have no other alternative but to pass a no dispute award in the case. Accordingly, a no dispute award is passed in so far as the present reference is concerned.

Dictated &amp; corrected by me.

R. K. DASH, Presiding Officer

नई दिल्ली, 8 फरवरी, 1994

का. आ. 651.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, सिन्डीकेट बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निहित औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-2-94 को प्राप्त हुआ था।

[संख्या एल.-12012/212/90-आई. आर. (बी-II)]

बी. के. शर्मा, डेस्क अधिकारी

New Delhi, the 8th February, 1994

S.O. 651.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workmen, which was received by the Central Government on 8-2-1994.

[No. L-12012/212/90-IR(B-ID)]

V. K. SHARMA, Desk Officer

#### ANNEXURE

#### BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

#### PRESENT :

Sri Y. Venkatachalam, M.A., B.L., Industrial Tribunal-I  
Dated, 28th day of January, 1994  
Industrial Dispute No. 76 of 1990

#### BETWEEN

P.Bhaskara Reddy, S/o P. Venkatarama Reddy, aged about 45 years,  
1-3-96, Azam Ganj Bodhan, Post  
Nizamabad District.

.. Petitioner

#### AND

The Syndicate Bank, represented by  
its Zonal Manager Pioneer House,  
6-3-653 Somajiguda, Hyderabad.

.. Respondent.

#### APPEARANCES :

Sri P. Damodar Reddy, Advocate for the Petitioner.  
Sarvasri E. Madan Mohan Rao, Mohd. Obedulla, T.  
Bhaskar Rao and Ch. Lakshminarayana, Advocates  
for the Respondent.

#### AWARD

The Government of India, Ministry of Labour, by its Order No. L-12012/212/90-IR.B.(II) dated 6-12-1990 referred the following dispute under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 between the Management of Syndicate Bank and their Workmen to this Tribunal for adjudication :

"Whether the action of the management of Syndicate Bank, Hyderabad in retiring Sri P. Bhaskara Reddy, Ex-employee from the Bank's services w.e.f. 7-3-88 is justified? If not, to what relief the workman is entitled?"

This reference was registered as Industrial Dispute No. 76 of 1990 and notices were served on both the parties.

2. The brief facts of the claim statement filed by the Petitioner read as follows :—The Petitioner have joined the service of the Respondent Bank in 1977 as an Attender and put in unblemished record of service till I was illegally terminated from service by verbal orders dated 8-3-1988. I have joined the service of the Respondent Bank in 1977 as an Ex-Serviceman. The Manager of Mosra Branch has not received my leave applications, without assigning any valid reasons. I was suffering from abdomen pain and due to ulcer. The Management has sent the letter dated 29-1-1988 but it was served on me only 6-2-1988. I have submitted a joining report on 5-3-1988 within 30 days, as stipulated in the letter dated 29-1-1988. The Manager verbally told me to come to the Branch on 7-3-1988 with medical certificate. I have submitted the Medical Certificate also on 7-3-1988 and requested the Manager to allow me to join duty. I submit that the Manager asked me to wait outside and tried to contact the Zonal Office at Hyderabad over telephone. The Manager could not get the connection on 7-3-88 upto 1.30 P.M. and accordingly he asked me come on the very next day. Again I have gone to the Branch on 8-3-1988 and the Manager tried to contact the Zonal Office on 8-3-88 also. Around 2.00 p.m. the Branch Manager told me that the Zonal Office has instructed him not to permit me to

join duty. I submit that the action of the Management in not allowing me to join duty on and from 5-3-1988 is contrary to the mandatory provisions Section 25-F of the I.D. Act. I submit that I have not committed any misconduct which warrants extreme penalty of removal from service. There exists a reasonable cause for not attending to the duties during the period from 28-10-1987 to 4-3-1988. I submit that due to sickness only I could not perform my duties and the presumption of the management that I have no intention to join duties is one sided, perverse, baseless and misconceived. The Management has denied me all the reasonable opportunities and no domestic enquiry was conducted against me. The action of the Management is contrary to the provisions of Section 25-F and 25-H of the I.D. Act. I submit that the Management has lost sight of the fact that their action amounts to "Retrenchment" that the provisions of Chapter V-B of the I.D. Act are applicable to my case and they have come to an erroneous conclusion that I have retired from service on my own accord from 6-3-1988 onwards. The Management has failed to issue 3 month's prior notice for my retrenchment. I have submitted many a times to the Management that even assuming but without admitting that I have committed some lapse while on duty, the punishment imposed on me is shockingly disproportionate. I submit that the Management has failed to pay me one month's notice pay along with retrenchment while terminating my services. I therefore pray that this Hon'ble Court may be pleased to pass an Award granting me the relief of reinstatement with full back wages, continuity of service and all other attendant benefits to meet the ends of justice.

3. The brief facts of the counter filed by the Respondent-Bank read as follows :—The facts of the case are that the petitioner was served with a voluntary retirement notice vide the letter dated 29-1-1988 by our Personnel Section, Workmen Wing, ZO, Hyderabad as per Clause XVI of the Bi-partite Settlement dated 17-9-1984 in view of his continuous absence for more than 90 days. Since the petitioner neither reported to duty within 30 days of receipt of the said notice nor complied with the requirement of the notice otherwise as per the said provisions of the Bi-partite Settlement, he was deemed to have voluntarily retired from the services of the Bank. The contention of the petitioner that his services were illegally terminated by oral order of the authorities of the Bank dated 8-3-1988 is denied. In fact, he was deemed to have retired voluntarily as per the Voluntary Retirement Notice dated 29-1-1988. As revealed from the past record of the Petitioner he was a chronic absentee and was abstaining from duties unauthorisedly resulting in initiation of departmental proceedings against him. In view of the continued unauthorised absence on many occasions and considering his absence for more than 90 days in the year 1988 without any information/leave letter to the concerned authorities the Bank was satisfied that the petitioner did not have any intention to join his duties. Accordingly, he was served with a voluntary retirement notice dated 29th January, 1988 as per clause XVI of the IV Bi-partite Settlement calling upon him to join duties within 30 days of receipt of the same specifying therein that his failure to report to duty within the stipulated time or explaining the reasons for his continued absence he would be deemed to have been co-voluntarily retired from the services of the Bank. It is true that voluntary cessation of the employment of the petitioner was not by way of punishment inflicted upon him in course of the departmental proceedings but it was in pursuance of the provisions of the Bi-partite Settlement. It is submitted that voluntary cessation of the petitioner being in terms of the provisions of the Bi-partite Settlement, it does not fall within the ambit of retrenchment as defined in I.D. Act. Hence the contention of the Petitioner as to the violation of Section 25(F) and 25(H) of the I.D. Act is baseless and as such the same are denied. As stated earlier, the petitioner was a chronic absentee resulting in deduction from salary. The act of the petitioner, therefore, reveals his very intention that he was not interested in his services in the bank. It is submitted that since the voluntary cessation of the petitioner does not amount to retrenchment within the meaning of the Section 25(F) of the I.D. Act he is not entitled to one month's pay or a notice in lieu thereof. In the circumstances explained above, the action of the management is perfectly legal and in accordance with the Bi-partite Settlement. The Management has not violated the principles of natural justice and the action

was taken in accordance with the rules. The action is perfectly legal. The relief prayed for by the Petitioner is liable to be rejected and the Petitioner is not entitled to reinstatement nor entitled for back wages, continuity of service. The claim petition is devoid of merit and is liable to be dismissed. Therefore, it is prayed that the Hon'ble Tribunal may be pleased to dismiss the claim petition.

4. The point for adjudication is whether the action of the Respondent in retiring Sri P. Bhaskara Reddy, ex-employee from the Bank's services w.e.f. 7-3-1988 is justified or not?

5. W.W.1 and W.W.2 were examined on behalf of the Petitioner and marked Exs. W1 to W8. On the other hand M.W.1 and M.W.2 were examined on behalf of the Respondent Bank and marked Exs. M1 to M4.

6. W.W.1 is P. Bhaskara Reddy. He deposed in brief that he is the concerned workman in this case. He joined the services of the Respondent as Attender on 21-1-1977 in ex-servicemen quota. After he joined the services in the Respondent-Bank he worked in Rudrur and Mosra Branches in Nizamabad. He could not attend the duty in the Respondent-Bank for three months from October, 1987 as he fell sick. He applied sick leave for those three months in December, 1987. When he sent the leave application in December, 1987 through a co-employee, the Bank authorities refused to receive the same and he was informed through the same co-employee through whom he sent the leave application to come and join the duty. After he recovered from sickness, he went to the Branch Manager of the Respondent and submitted joining report on 5-3-1988, and he was permitted to join the duty on that day. Ex. W3 is the office copy of the joining report, he submitted to the Branch Manager of the Respondent-Bank. On the date of his joining, he was instructed by the Branch Manager to produce medical certificate for the period of his absence. 5-3-1988 happened to be Saturday. So he produced the medical certificate on the following Monday i.e. 7-3-1988 before the Branch Manager of the Respondent and the Branch Manager received the said medical certificate, produced by him and permitted him to work in the Bank on 7-3-1988 and 8-3-1988. On 8-3-1988 at 12 noon the Branch Manager informed him that he received a phone call at 11 A.M. on that day from Zonal Office, Hyderabad that he reported to duty in last moment and instructed the Branch Manager not to permit him to join the duty and thereafter the Branch Manager did not allow him to work in the Branch. On 8-3-1988 the Branch Manager did not pay him any retrenchment compensation when he was not allowed to attend to duty, and on that day no statement was recorded from him by the Branch Manager and no enquiry was conducted by him. It is not correct to state that he voluntarily retired from the service of the Respondent-Bank. He did not resign his job in the Respondent and he did not inform the Bank authority to that effect at any time. The Management of the Respondent-Bank issued notice to recover the loans he has taken from the Respondent-Bank. He gave a reply to the said notice and the office copy of the said reply dated 8th April, 1991 is Ex. W6. A suit in O.S. No. 125 of 1991 on the file of Distt. Munsiff's Court, Bodhan was filed by the Respondent-Bank against him for recovery of the loan amounts and the photostat copy of the notice issued in that suit is Ex. W7. He prays that an award may be passed granting him the relief of reinstatement with full back wages, continuity of service and all other attendant benefits.

7. W.W.2 is N. D. S. Mohan Rao. He deposed that he joined the service of the Respondent-Bank at Mosra Branch Nizamabad District on 26-12-1984 as Clerk. He knows the petitioner since he worked in Mosra Branch as Attender. On 5-3-1988 a Saturday the petitioner came to the Branch to report for duty. Since he came to the Branch without a medical certificate after availing sick leave, he was not allowed to join. He was asked to bring the medical certificate and to report duty on next Monday i.e. 7-3-1988. On Monday the Manager has not allowed him to join duty as he consulted the Zonal Office at Hyderabad over Telephone. Thereafter the petitioner has gone away. On both of the Saturday and Monday, at Mosra Branch, Nizamabad district, he was present. At present he is working in Nursingi Branch R.R. District.

8. M.W.1 is T. Bhooma Rao. He deposed that he is the Manager in the Respondent Bank presently working in Karimnagar Branch. He knows the petitioner. He worked as an Attender when he was manager at Mosra Branch at the material time. He knows the facts of this case. The Bank issued a voluntary retirement notice to the petitioner and the notice was served on the petitioner on 6-2-1988. As the Petitioner was unauthorisedly absent for more than 90 days continuously, he was asked to resume his duties within 30 days after receipt of the said notice. If he fails to resume his duty within the stipulated time of 30 days he will be deemed that he will retire voluntarily. The petitioner did not report for duty within 30 days as per the notice. The Petitioner did not come to the Branch on 5-3-1988 and he has not submitted any joining report or medical certificate. The petitioner did not submit any leave application for the absent period. As the petitioner did not come to the Branch on 5-3-1988, the question of his advice to him to come on 7-3-1988 to the Branch does not arise. Therefore the petitioner is voluntarily retired as per the notice. As per the past record the petitioner is a chronic absentee.

9. M.W.2 is Harsh Mudgal. He deposed that he worked as Asstt. Personnel Manager. He knows the facts of this case. Petitioner absented himself from duties for a period beyond 90 days continuously. Therefore in terms of Clause XVI of the by-partite settlement dated 17-9-1984 it was treated that he has voluntarily ceased the employment from the bank. The petitioner was issued a notice dated 29th January, 1988 under Ex. M3 the petitioner was informed vide the said notice that he has been absented from the duties continuously with effect from 28th October, 1987 and that he shall report for the duty within 30 days of the receipt of Ex. M3. And that if he fails to join duty within the stipulated period it will be presumed that he goes not have any intension to rejoin the duties and accordingly it will be treated as his voluntarily ceased his employment with the Bank. Ex. M3 is served on the petitioner under Ex. M1(a) on 6-2-88. As per Ex. M3 the petitioner did not report for duty. Ex. M4 is print booklet of By-partite Settlement dated 17-9-1984. Therefore as per Clause 16 of the said Bi-partite Settlement the petitioner is voluntarily ceased the employment with the Bank.

10. In this dispute the contention of the Petitioner-workman that the Manager of Mosra Branch has not received his leave applications, without assigning any valid reasons, that he was suffering from abdomen pain and due to ulcer, that the Management has sent the letter dated 29th January, 1988 but it was served on him only on 6th February, 1988, that he submitted a joining report on 5th March, 1988 within 30 days as stipulated in the letter dated 29-1-1988, that 5-3-1988 was a Saturday and 6-3-1988 being Sunday, it is a Public Holiday, that he has submitted the Medical Certificate also on 7-3-1988 and requested the Manager to allow him to join duty. On 8-3-1988 at about 2.00 p.m. the Branch Manager told him that the Zonal Office has instructed the Manager not to permit him to join duty. Hence the action of the Management in not allowing him to join duty on and from 5-3-1988 is contrary to the mandatory provisions of Section 25-F of the I.D. Act.

11. The contention of the Respondent-Bank on the other-hand contended that the Petitioner-Workman was served with a voluntary retirement notice dt. 29-1-1988 as per Clause XVI of the IV Bipartite Settlement dt. 17-9-1984 in view of petitioner continuous absence for more than 90 days. Since the petitioner neither reported to duty within 30 days of receipt of the said notice nor complied with the requirement of the notice otherwise as per the said provisions of the Bipartite Settlement, he was deemed to have voluntarily retired from the services of the bank. Since the dispensation of the employees' service was as per the relevant provisions of the Bipartite Settlement which is a settlement within the meaning of Section 2(p) & Section 18(i) of the I.D. Act read with Rule, 58 of the I.D. (Central) Rules, 1957 the same cannot be construed as retrenchment as per the I.D. Act.

12. At the very outset, a reading of Clause XVI of the IV Bipartite Settlement dt. 17-9-1984 workmen it is stated as follows:

**"XVI Voluntary Cessation of Employment by the Employees:**

Where an employee has not submitted any application for leave and absence himself from work for a period of 90 or more consecutive days without or beyond any leave to his credit or absent himself for 90 or more consecutive days beyond the period of leave originally sanctioned or subsequently extended or where there is satisfactory evidence that he has taken up employment in India or the Management is satisfied that he has no present intention of joining duties, the management may at any time thereafter give a notice to the employee's last known address calling upon the employee to report for duty within 30 days of the notice, stating, inter alia, the grounds for the Management coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence, where available. Unless the employee reports for duty within 30 days or unless he gives an explanation for his absence satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the Bank's service on the expiry of the said notice. In the event of employee submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days from the date of the expiry of the aforesaid notice without prejudice to the Bank's right to take any action under law or rules of service.

....."

Where in this case the Petitioner-workman was absent for more than 90 days continuously without any leave, i.e. from 28-10-1987 to 4-3-1988 and that the Respondent Bank served with Voluntary Retirement Notice vide their letter bearing No. 0191/ZOH/PS/223856 dt. 29-1-1988 in view of the Petitioner's continuous absence for more than 90 days. The Petitioner neither reported to duty within 30 days of receipt of the said notice nor complied with the requirement of the notice otherwise as per the said provisions of the Bipartite Settlement, he was demand to have voluntarily retired from the services of the Bank. It is pertinent to note that the Petitioner has received the Voluntary Retirement Notice dt. 29-1-1988. In cross examination of W.W1 the concerned workman has stated as follows:—Ex. M1 is the local delivery book of the Respondent of the year 1986 to 1990 and at page 17 against Serial No. 1 the petitioner received proceedings No. 0991/ZOH/PS/WW/223856 dated 29-1-1986 under his signature. It is Ex. M1(A) The petitioner further stated in cross examination that it is true that he remained absent unauthorisedly for more than 90 days prior to 29-1-1988. From the above statement that it is an admitted fact that the Petitioner-workman absented himself for more than 90 days and that he has received the Notice dt. 29-1-1988.

13. The next point this Tribunal has to see whether the Petitioner workman reported for duty within 30 days of the receipt of the Notice dt. 29-1-1988 to the Bank. The evidence of W.W1 in chief examination he stated that after he recovered from sickness, he went to the Branch Manager of the Respondent-Bank and submitted joining report on 5-3-1988 and he was permitted to join the duty on that day. Ex. W3 is the office copy of the joining report. He submitted to the Branch Manager of the Respondent-Bank. Now we have to see whether the Petitioner-Workman went to the Branch Manager on 5-3-1988 and submitted his joining report. M.W1 was examined on behalf of the Respondent Bank. He was the Manager at the relevant time. He deposed that the Petitioner did not report for duty within 30 days as per the Notice. The Petitioner did not come to the Branch on 5-3-1988 and he has not submitted by joining report or medical certificate. He further deposed that the petitioner did not submit any leave application for the absent period. As the Petitioner did not come to the Branch on 5-3-1988 the question of his advice to him to come on 7-3-1988 to the Branch does not arise. The evidence of W.W1 the concerned workman in question stated in his evidence that after he recovered from sickness, he went to the Branch Manager of

of the Respondent-Bank and submitted joining report on 5-3-1988 and he was permitted to join the duty on that day. Ex. W3 is the office copy of the joining report, he submitted to the Branch Manager of the Respondent-Bank. A perusal of Ex. M2 the Attendance Register of the Respondent-Bank would reveal that the Petitioner-workman was marked absent on 5-3-1988, under Ex. M2(A). Even on 7-3-1988 under Ex. M2(B) the Petitioner workman was marked absent. From 8-3-1988 onwards he was no more in service. Hence I find that the Petitioner-workman did not report and join duty on 5-3-1988 nor any representation was made to the Branch Manager for not allowing him to join duty on 5-3-1988, 7-3-1988 or 8-3-1988. The Petitioner workman has not protested before the Branch Manager that he was not allowed to submit his joining report or joining the duty. So taking into consideration all the facts and circumstances of the case, I am of the clear view that the Petitioner workman absented himself unauthorisedly from duty continuously without leave beyond 90 days or more and that the Respondent Bank has rightly issued the Proceedings No. 0191/ZOH/PS/WW/223856 dt. 29-1-1988 voluntarily retiring him from service. I find that the Management has not violated the principles of natural justice and the action was taken in accordance with the rules, and the Petitioner workman is not entitled to reinstatement nor entitled for back wages, continuity of service, since he abstained from duty continuously for more than 90 days.

14. In the result, the action of the Management of Syndicate Bank, Hyderabad in retiring Sri P. Bhaskara Reddy, Ex-employee from the Bank's service w.e.f. 7-3-1988 is justified. The workman is not entitled to any relief.

15. Award passed accordingly.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 28th day of January, 1994.

Y. VENKATACHALAM, Industrial Tribunal-I.

**Appendix of Evidence.**

Witnesses Examined on behalf of Petitioner-Workman:

Witnesses Examined on behalf of the Respondent-Management:

W.W1—P. Bhaskar Reddy

M. W1 T. Bhooma Rao

W.W2—N. D. S. Mohan Rao

M.W2—Hausad Mudgal

**Documents marked for the Petitioner-Workman:**

Ex. W1 22-3-77—Memorandum issued by staff controller Sri P. Bhaskar Reddy.

Ex. W2 8-6-83—Fixation of pay of Ex-serviceman employees issued to P. Bhaskar Reddy.

Ex. W3 5-3-88—Joining Report on 5-3-88 after sickness.

Ex. W4 7-3-88—Medical Certificate.

Ex. W5—Minutes of the discussion held on 31-3-90, between the Management of Syndicate Bank Zonal Office, Hyderabad and their workmen.

Ex. W6—Advocate's Notice issued by the Advocate Sri P. Damodara Reddy, to Sri Ashok Kumar Deshpande, Advocate.

Ex. W7—Xerox copy of the Summons in O.S. No. 125/91 in the District Munsif, Bodhan.

Ex. W8—Acknowledgement by the Zonal Office, Hyderabad with regard to the application dt. 9-3-1987 of the Petitioner.

**Documents marked for the Respondent-Management:**

Ex. M1—Local Delivery book of the Respondent Bank.



Ex. M1(A)—Signature of the Petitioner in token of receiving the Proceedings No. 0191/ZOH/PS/WW/223856, dt. 29-1-88.

Ex. M2—Attendance Register.

Ex. M2(A)—Absent marked in the Ex. M2 for the day 5-3-88.

(B)  
(C)

Absent marked for 7-3-88 and 8-3-88 in Ex. M2.

Ex. M3—Notice of intimation.

Ex. M4—Booklet of Bipartite Settlement.

नई दिल्ली, 9 फरवरी, 1994

का. प्रा. 652.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, यूको बैंक के प्रबंधन के संबंध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, धनबाद (नं० 2) के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-2-94 को प्राप्त हुआ था।

[संख्या एल-12012/274/92-आईआर (बी-2)]

वी. के. शर्मा, डेस्क अधिकारी

New Delhi, the 9th February, 1994

S.O. 652.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Dhanbad (No. 2) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Uco Bank and their workmen, which was received by the Central Government on 9-2-94.

[No. L-12012/274/92-IR(B-II)]

V. K. SHARMA, Desk Officer

#### ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO 2) AT DHANBAD

PRESENT :

Shi B. Ram,  
Presiding Officer.

In the matter of an industrial dispute under section 10(1)(d) of the I.D. Act, 1947.

Reference No. 9 of 1993

PARTIES :

Employers in relation to the management of Uco Bank and their workmen.

APPEARANCES :

On behalf of the workmen : Shri B. Prasad, State Secretary, Uco Bank Employees Association.

On behalf of the employers : Shri K. K. Mukherjee, Dy. Chief Officer, Law.

STATE : Bihar

INDUSTRY : Banking

Dated, Dhanbad, the 3rd February, 1994

#### AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-12012/274/92-I.R. B-2 dated the 27th January, 1993 :

#### SCHEDULE

"Whether the action of the management of the Uco Bank in terminating the services of Shri Chandra Sekhar Panjiyara and not taking him back in the employment as also refusing to pay the back wages to the workman is right and justified? If not, to what relief is the workman entitled to?"

2. In this case the action of the management has been questioned in terminating the services of Shri Chandra Sekhar Panjiyara and not taking him back in the employment as also refusing to pay him back wages.

3. The concerned workman submitted his statement of claim stating that he joined the services of Uco Bank on 1-4-89 as Class IV staff at Jagdishpur branch in the district of Bhagalpur having its Zonal Office at Patna. He was stated to have served the Bank right from 1-4-89 to 26-10-91 on uninterruptedly.

4. During the tenure of employment the workman performed the duties of peon and his main function was taking out ledgers from the Almirah carrying out ledgers and registers plus token scroll book. He has also been serving tea and water to the members of the staff and customers. In this way he claims to have worked for more than 240 days of continuous service in a year. The number of days worked by him yearwise has been spelt out in para-6 of the W.S.

5. He was paid @ Rs.12/- per day which was subsequently raised to Rs. 16 per day. In this way he was not paid wages at par with the regular staff of the bank although his working hour was from 10.15 A.M. to 6.00 P.M. It was stated that the Manager of Jagdishpur branch of the Uco Bank terminated the services with effect from 27-10-91 without assigning any reason. The Bank while terminating his services did not give any notice or notice or the retrenchment compensation which was violative of the provisions as contained under Section 25F of the I.D. Act. The concerned workman claim his reinstatement with full back wages plus regularisation of his service

6. The management refuted the claim of the concerned workman, and also filed separate W.S. It was contended that the engagement of Shri Chandra Shekhar Panjiyara was without any justification and without any authority. There was a settlement dt. 12-10-89 by which it was clearly stipulated that the casual workers who were already working on the day were to be considered for their regular absorption and it was decided simultaneously by the management to disengage such casual workers who had not been regularised according to the circular dated 19-10-89 issued in pursuance of the settlement dt. 12-10-89.

7. It was incumbent duty on the part of the local management to disengage in the month of October, 1989 but unfortunately the local management did not take any step and allowed unauthorisedly engagement of the concerned workman till 26-10-91.

8. The concerned workman was quite aware that he has been engaged unauthorisedly and therefore he left his job voluntarily without any intimation to the management. It was also stated that he was working on part time basis for one to two hours during morning hours and one hour in the afternoon from 4 P.M. to 5 P.M. During this period he had been serving water and tea and also doing some odd jobs for the officers and staff of the Bank. Thus the concerned workman being a casual part time worker cannot have any claim for his permanent employment.

9. While giving parawise reply it has been denied that he had been engaged as peon or that he was performing the duty of taking out ledgers from the Almirahs and registers etc. It was also denied that he used to work from 10.15 A.M. to 6 P.M. continuously. In this way it was stated that the concerned workman is entitled to no relief and the award be answered accordingly.

10. The question for consideration would be as to whether the concerned workman has got any claim for his reinstatement.

ment with full back wages and regularisation in the services of the Bank.

11. Admittedly the concerned workman was engaged on 1-4-89 by the local management of the bank at Jagdishpur branch in the district of Bhagalpur as casual workman. In para-3 of the W.S. the management stated that the local management should have disengaged the concerned workmen in October, 1989 itself but unfortunately no such step was taken and he was allowed to continue unauthorisedly as casual workman till 26-10-91. We have no document to show the conditions of employment but it is true that the concerned workman worked from 1-4-89 to 26-10-91.

12. In para-2 of the W.S. it is stated that there was a settlement dt. 12-10-89 with a clear stipulation that casual workers who were already working on the date were to be considered for their regular absorption. It was also decided to discharge such casual workers who had not been regularised according to the circular issued in pursuance of the settlement dt. 12-10-89. Admittedly, the concerned workman was doing as casual workman from before 12-10-89 but he was not taken in employment. Who have no paper as to why he was found unfit for absorption in the Bank's services. Even then he was allowed to continue and payment was made through vouchers. If he was not disengaged the real fault lies with the Bank management and not with the workman.

13. The concerned workman claim to have put in more than 240 days attendance in a calendar year. He stated to have worked in the bank continuously from 10.15 A.M. to 6.00 P.M. The management denied this assertion and stated that he was working on part time basis for about 2 hours in the morning and one hour in the afternoon. As stated in para-5 of the W.S. he was serving water and tea and doing some odd jobs for the officers and staff of the bank.

14. As regards the number of days worked by the concerned workman I find that the management has proved a list showing days employed by the concerned workman during the year 1989, 1990 and 1991. The document has been marked Ext. M-1. The chart under Ext. M-1 shows that the concerned workman worked for 274 days in 1990 and 241 days in 1991. It may be mentioned that he served till 26-10-91. Thus it is apparent that he worked for more than 240 days in a calendar year. In this way it will be absolutely wrong to suggest that he did not complete continuous service in a calendar year.

15. It is the case of the management that he had been doing only for few hours say about 3 hours every day. But we have no document to support this fact. The working chart under Ext. M-2 speaks about the payment per day. But it is silent so far the working was concerned. Had the concerned workman been working for few hours every day that was expected to have been noted under the document which is Ext. M-1. Silence will lead to presumption that he had been working for whole day like other regular employees.

16. The nature of the work done by the concerned workman have close connection/relation with the working hour. The workmen vide para-5 of its W.S. stated that during the tenure of his employment he performed the duty of a Peon, such as taking out ledgers from Almirah and carrying out register and token scroll book. He also claimed to have been serving tea and water to the staff and customers. This fact has been testified by MW-1 when he stated that the concerned workman was carrying registers from one table to another table. The witness had joined Jagdishpur branch in May, 1991. He had seen the concerned workman, doing this job during his tenure. However, he is not sure whether the concerned workman was doing this job during the period from April, 1989 to May, 1990. Admittedly during this period there was no posting of sub-staff there. Normally the concerned workman was expected to have been doing all such jobs as stated by him in his W.S. in absence of any permanent peon. Ext. M-3 states about the existing strength of the staff. In the year 1991 there was one permanent peon. The concerned workman was doing the job like carrying registers and serving tea and water to the staff. He was

doing this job when a permanent peon was already there. In the circumstances the question does not arise as to why he will not be doing such jobs when there was no posting of any permanent sub-staff during the period from April, 1989 to May, 1990. Thus it is prima facie proved that the concerned workman was not only serving tea and water but also carrying registers and scroll books etc. I think no hours can be fixed for doing all such jobs. It is not that the registers and scroll books can be carried only in the first hour. Similarly serving tea and water cannot be done only for one hour. All such jobs are required to be done so long the office hours continue.

17. From the facts noted above it is well established that the concerned workman served like a peon in Jagdishpur Branch of Uco Bank for 2-1/2 years and that he also completed 240 days attendance in a calendar year. This means he was in continuous service as defined under Section 25B of the I.D. Act. According to the concerned workman he was stopped from duty orally by the management without assigning any reason. However according to the management the concerned workman left the work suo moto for he was not getting any job regularly, the question of not getting job does not arise. Ext. M-1 is the sufficient proof to show that the concerned workman was getting job almost everyday in a month which he was doing throughout the year. This is suggestive of the fact that the concerned workman was disengaged by the management from his work. Disengagement/stoppage will amount to retrenchment with in the meaning of Section 2(oo) of I.D. Act. For the reasons stated above the compliance of the provision of Section 25F was must. It may not be out of place to mention here that Jagdishpur Branch comes under Class II category (medium) which is a growing branch.

18. The concerned workman has claimed back wages also. He has stated to have represented his case before the management after his stoppage. But we have no paper to support this fact. Besides this he had taken loan from the Bank for business of shoe and chappal. Ext. W-4 is the photo copy of the application for loan. This means he was running business and earning his bread.

19. I have examined various aspect of the matter and for the reasons stated above the concerned workman was entitled for his absorption in the Banks service. The management is directed to reinstate and regularise the concerned workman in Cat. IV as sub-staff within 2 months from the date of publication of the award.

This is my Award.

B. RAM, Presiding Officer

नई दिल्ली, 9 फरवरी, 1994

का. आ. 653.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, यूको बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, धनुवाद (2) के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-2-94 को प्राप्त हुआ था।

[संख्या एल-12012/09/93-आई. आर. (बी-2)]

वी. के. शर्मा, डेस्क अधिकारी

New Delhi, the 9th February, 1994

S.O. 653.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Dhanbad (No. 2) as shown in the Annexure in the Industrial Dispute between the employers in rela-

tion to the management of UCO Bank and their workmen, which was received by the Central Government on 9-2-94.

[No. L-12012/9/93-IR(B-II)]

V. K. SHARMA, Desk Officer

#### ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

#### PRESENT :

Shr B. Ram,  
Presiding Officer,

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act, 1947.

Reference No. 47 of 1993

#### PARTIES :

Employers in relation to the management of UCO Bank and their workmen.

#### APPEARANCES :

On behalf of the workmen : Shri B. Prasad, State Secretary, UCO Bank Employees Association, Patna.

On behalf of the employers : Shri K. K. Mukherjee, Dy. Chief Officer, Law.

STATE : Bihar

INDUSTRY : Banking

Dated, Dhanbad, the 3rd February, 1994

#### AWARD

The Government of India Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-12012/9/93-I.R.B.II dated, the 12th May, 1993.

#### SCHEDULE

"Whether the claim of UCO Bank Employees' Association, Patna that Shri Bhagwati Prasad Gupta had worked for more than 240 days in an year without interruption and that termination of his services by the management of UCO Bank as violative of Section 25F of the Industrial Disputes Act is justified ? If so, what relief the workman is entitled ?"

2. The action of the management of UCO Bank in terminating the services of Shri Bhagwati Prasad Gupta without assigning any reason has been challenged.

3. The concerned workman has filed statement of claim stating that he was appointed as Peon at Bakudih branch of the UCO Bank under Sahibganj District on 28-3-85 as temporary Peon on daily wage basis. He has stated the number of working days employed by him in para-4 of the W.S. which come to 576 days. He was doing as Sweeper from 9.00 A.M. to 10.00 A.M. and as peon from 10.00 A.M. to 5.45 P.M. He was being paid @ Rs. 60/- per month as sweeper and Rs. 10/- per day for doing the job of peon. But all of a sudden his services were orally terminated by the management with effect from 27-10-86.

4. The workman claimed that he had been doing every day from 9.00 A.M. to 5.45 P.M. and his main function was to clean the floor, chairs, tables and also to bring out ledgers registers from the almirah and carry out token book, scroll book etc. from accounts department to cash department and vice versa. He also claims to have been serving water to the member of the staff and the customers. It was stated that the action of the management in terminating the services of the concerned was violative of the provision under Section 25F of the I.D. Act for he was neither given one month's notice nor notice pay and the retrenchment compensation. The workman has prayed for reinstatement with full back wages and also for regularisation of his services as Class IV employees.

5. The management refuted each and every claim of the concerned workman and submitted by filing W.S. that the concerned workman was engaged as casual mazdoor for carrying on part time casual jobs and part time sweeper's job on contract basis and he was being paid @ Rs. 10 per day for performing certain odd jobs for two to three hours and @ Rs. 2/- per day for doing sweeping job only for an hour or so. In this way it was stated that he was a part time casual worker and his terms and conditions of employment was part time employment on casual basis.

6. It was also contended that the concerned workman never completed 240 days attendance in a calendar year. It was stated that the concerned workman performed casual nature of job for the first time from 30-3-85 to 30-12-85 putting 220 days of attendance and his services came to an end on 30-12-85. In the subsequent year he was re-engaged as casual worker from 2-1-86 and he worked upto 24-10-86 putting 230 days of attendance. After that he left his services at his own accord with effect from 25-10-86 as he did not feel interested to continue in such employment.

7. The management also contended that a settlement was arrived at on 12-10-89 between the management and the union according to which all the casual workers who had worked in the past were to be considered for regularisation within the frame work of the settlement. It was stated that the concerned workman was not covered under the aforesaid circular nor the sponsoring union took up his case for regularisation.

8. On these grounds it was submitted that the concerned workman has got no case and is not entitled to any relief.

9. The question for consideration is as to whether the concerned workman namely Shri Bhagwati Prasad Gupta is entitled to reinstatement with full back wages and also for regularisation as claimed by him.

10. There can be no denial of the fact that the concerned workman did not work in Bakudih branch. According to the workmen he was engaged as temporary peon on daily wage basis but according to the management he was engaged as casual mazdoor for carrying on part time casual jobs. Admittedly, the concerned workman was never issued any appointment letter. However, in para-2 of the W.S. the management stated that he was a part time casual worker. His terms and conditions of employment was on part time casual basis. I find that no terms and conditions of employment has been filed in this case just to show that the concerned workman has been working for certain fixed hours. The management has got proved certain vouchers showing that he was being paid @ Rs. 10/- for coolie charges. The photo copy of the vouchers have been marked Ext. M-3 series. It is nowhere the case of the management that the concerned workman was being used as coolie. Even the bipartite settlement does not speak of any workman like coolie. In these vouchers there is no mention that the concerned workman worked for only few hours. In this way we find that no documentary evidence have been adduced even to suggest that the concerned workman had been doing for few hours every day. In para-14 of the W.S. the management stated that the concerned workman used to work as sweeper for one hour or so between 9.00 A.M. and 10.00 A.M. on the basis of his contract of employment Surprisingly no paper showing any contract of employment has been filed on behalf of the management. His working hour used to spread from 9.00 A.M. to 6.00 P.M. with a break from 12 mid day upto 4 P.M. In para-15 it is stated that he was getting Rs. 2/- per day for sweeping charges and Rs. 10/- per day for working as casual mazdoors. It has been clear in para 18 of the W.S. that the concerned workman was working for one hour or so in sweeping and cleaning the floor dusting the chair table etc. and for one or two hours on casual nature of job for dusting and cleaning the almirah books etc. and bringing water or tea for the staff or the customers between 10.00 A.M. to 12 Noon and between 4 P.M. to 5.00 P.M. or so. It does not stand to my reason as to how the management bank has been engaging the concerned workman for one hour in cleaning and sweeping the floor and dusting the chair and table and for another one hour or two hour on casual nature of job for dusting or cleaning almirahs books etc. I feel cleaning and dusting of almirahs and books are not required to be done every-day. But according to the management he has been doing

this work also everyday. It has been denied that he was hardly carrying any register from the Almirah. At this stage reference can be made to the evidence of MW-1 Sri A. P. Nait, Asstt. Manager UCO Bank, Bakudih Branch. In the very chief examination witness stated that the concerned workman was working as sweeper. He also used to serve tea and bring water to the staff and also used to handle the files. I do not think handling of files can be done only in a fixed hour. It is such type of work which can be required to be done very time in the working day.

11. The workmen claim to have worked for more than 240 days in a calendar year. The Bank management has denied this fact. Ext. M-1 is the list of days showing engagement of Shri Bhagwati Prasad Gupta, ex-casual worker of the UCO Bank. This shows that in the year 1985 the concerned workman worked for 220 days right from March to December. In the year 1986 he worked from January to October almost every day and the total comes to 230 days. I think the management was mistaken in computing the days for the purpose of continuous service as defined under Section 25B of the I.D. Act. Continuous service has to be counted preceding 12 months from the date the services of a particular workman is stopped or terminated. Admittedly the services of the concerned workman was stopped in the month of October, 1986 after serving the department for 1-1/2 year. However, according to the management the concerned workman had suo motu left the work. In this way for the purpose of Section 25B of the I.D. Act, the period of 12 months have to be counted right from October, 1986 preceding November, 1985. The number of days worked by the concerned workman in the year 1986 was 230 days. In the year 1985 he worked for 24 days in the month of November and 23 days in the month of December. In this way he definitely served for more than 240 days in a calendar year. In absence of any contract and condition of service it will be presumed that the concerned workman had been working for the full days although he was being paid a very beggars amount everyday. So I am to hold that he was in continuous service. His termination will amount to retrenchment within the meaning of Section 2(oo) of the I.D. Act. It was incumbent rather necessary on the part of the management to comply with necessary provision as contained under Section 25F of the I.D. Act.

12. In para-3 of the W.S. of the management the management stated that the concerned workman performed casual nature of job from 30-3-85 to 30-12-85. Again in subsequent year he was engaged as casual worker from 2-1-86 and he worked upto 24-10-86. We may pause for a moment here. the period of break is only for 2 days i.e. between the year 1985 and 1986. He served in the year 1985 till 30th December, 1985 but again he was re-engaged from 2-1-86. I am to hold that this break of one or two days was done simply the ulterior motive so that the workman may not complete 240 days of attendance in a calendar year little knowing that for the purpose of continuous service the working days have to be counted in different ways

13. Ext. M-2 is the chart showing the strength of the staff working in the concerned branch. Admittedly, the concerned workman has started working from the month of March, 1985 and he served till 24-10-1986. MW-1 has stated that permanent sub-staff at Bakudih branch was appointed on 24-10-86. This means the concerned workman left the work immediately after appointment of the permanent sub-staff. The witness further stated that after the concerned workman left one Shri S. P. Shroff was appointed as sub-staff in its branch office. He further stated that the concerned workman was not called for interview at the time when selection of Shri Shroff was made. I think this action of the management cannot be called just and proper. The management had stated that a settlement had been arrived at on 12-10-89 where under the casual workers were considered for their regularisation. We have no paper just to assess the mode of selection but it does not stand to my reason as to why the concerned workman was not selected for the job and specially when he had sufficient experience of doing as peon for 1-1/2 year. Admittedly, during the employment of the concerned workman there was no permanent sub-staff and naturally he was

expected to have been doing all the work which is required to be done by a permanent sub-staff namely carrying and taking out registers from the Almirah, also serving tea and water to the staff and so it will be simply wrong to suggest that the concerned workman had been doing part time work only for a particular few hours. The concerned workman has been examined as WW-1 and he has asserted his claim for reinstatement and regularisation. In the W.S. of the workmen it has been stated that he had approached the management and represented his case for his reinstatement but there is no such paper to substantiate this fact. Admittedly, the concerned workman had taken loan twice from Bakudih branch. At first he had taken loan of Rs. 5000 for purchasing a cow. The second loan was also taken for purchasing a cow. The witness had stated that he had purchased the cow to sell milk. This means he was earning his bread by selling milk.

14. I have considered every aspect of the matter and in my opinion the concerned workman was in continuous service and he completed more than 240 days in a calendar year. His termination amounted to retrenchment within the meaning of Section 2(oo) of the I.D. Act and before retrenchment he was required to be served notice, notice pay or the retrenchment compensation as provided under Section 25F of the I.D. Act. For the reasons stated above, I would order that the concerned workman be reinstated on his original job but in the circumstances of the case there can be no order as to back wages. He is also entitled for his regularisation in the job of Class IV employment as sub-staff. The management is thus directed to reinstate and regularise the concerned workman as sub-staff within 2 months from the date of publication of the Award.

This is my Award.

B. RAM, Presiding Officer

नई दिल्ली, 9 फरवरी, 1994

का. आ. 654 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, सेंट्रल बैंक ऑफ इन्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चण्डीगढ़ के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-2-94 को प्राप्त हुआ था।

[संख्या एल-12012/175/89-डी-2(ए)/आई.आर. (बी-II)  
बी. के. शर्मा, डेस्क अधिकारी

New Delhi, the 9th February, 1994

S.O. 654.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure in the industrial dispute between the employers in relation to the management of Central Bank of India and their workmen, which was received by the Central Government on 9-2-94.

[No. L-12012/175/89-D-IIA/IR(B-ID)]  
V. K. SHARMA, Desk Officer

#### ANNEXURE

BEFORE SHRI ARVIND KUMAR, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

Case No. I.D. 140/89

S.C. Siwach Vs. Central Bank of India.

For the workman : Shri Mangat Sharma.

For the management : Shri Yogesh Jain.

## AWARD

Central Government vide gazette notification No. L-12012/175/89-D.II(A) dated 6th September, 1989 issued U/s 10(1)(d) of I.D. Act 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Central Bank of India in not allowing Shri S. C. Siwach to officiate as Special Assistant for certain days between 19-2-87 to 4-6-87 is justified ? If not, to what relief is the workman entitled ?

2. Present case is fixed for replication and affidavit of the workman. However Mr. Mangat Sharma authorised representative of the petitioner has made a statement that they want to withdraw the present reference, as union is not interested to pursue the same. In view of statement made by the authorised representative of the petitioner no dispute award is returned to the Ministry, Chandigarh. 20-1-94.

ARVIND KUMAR Presiding Officer

नई दिल्ली, 11 फरवरी, 1994

का. आ. 655.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, सिंडिकेट बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, मद्रास के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-2-94 को प्राप्त हुआ था।

[संख्या एन-12012/593/86-डी-2(ए)/आई.आर. (बी-2)]  
बी. के. शर्मा, डेस्क अधिकारी

New Delhi, the 11th February, 1994

S.O. 655.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Madras as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workmen, which was received by the Central Government on 11-2-94.

[No. L-12012/593/86 D. IIA/IR(B-II)]  
V. K. SHARMA, Desk Officer

## ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU, MADRAS

Monday, the 30th day of August, 1993

PRESENT :

THIRU K. SAMPATH KUMARAN, B. A. B. L.,  
INDUSTRIAL TRIBUNAL

INDUSTRIAL DISPUTE 132/1987

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the Workman and the Management of Syndicate Bank, Madras).

BETWEEN :

Smt. A. S. Nirmala, 527/1, ICF South Colony,  
Madras-600038.

AND

The Manager, Syndicate Bank, Mount Road, Madras

REFERENCE

Order No. L-12012/593/66-D. II(A), dated 3-12-87,  
Ministry of Labour, Government of India, New  
Delhi.

521 GI/94—18.

This dispute coming on for a final hearing on the 25th day of August, 1993 upon perusing the reference. Claim and Counter Statements, and all other material papers on record and upon hearing the arguments of Thiru K. Chandru, Advocate appearing for the Workman and of Thiru T. S. Gopalan, Advocate appearing for the Management and this dispute having stood over till this day for consideration, this Tribunal made the following :

## AWARD

This reference relates to the dispute between the Management of the Syndicate Bank and its employee, and has been made for the adjudication of the following issue :

"Whether the action of the Management of Syndicate Bank, Madras in dismissing from service Smt. A. S. Nirmala, w.e.f. 15-12-83 is justified ? If not, to what relief the workman is entitled to ?"

2. The petitioner filed the following Claim Statement :

The petitioner was working as a Special Assistant in the Mount Road branch of the Respondent-Bank, and she had put in 16 years of service. A charge sheet dated 31-5-83 was issued to her, the main charge being that she had falsified and misappropriated the money belonging to the Bank. In the meanwhile a Criminal case was instituted against her before the Second Metropolitan Magistrate, Madras (c. c. No. 11281 of 1984). Though, the petitioner was found guilty she was released on Probation under Sec. 4(1) and 4(3) of Probation of Offenders Act, 1958 by the judgement dated 30-1-85. Even before the charge sheet was laid against her, the respondent directed her by an order dated 18-3-82 to deposit Rs. 21,000 which the petitioner deposited, alongwith a covering letter. To the Charge sheet issued against the petitioner, she sent a letter admitting the charges, and pleaded for leniency. The respondent ordered for an enquiry. On 8-9-83, the petitioner appeared before the Enquiry Officer, admitted all the charges, and requested for a lenient punishment. The Enquiry Officer by his report dated 7-10-83 found her guilty of the charges only on the basis of her admission. The respondent, by the notice dated 31-1-83, called upon her to show cause as to why she should not be dismissed from service. She was also asked to appear for personal hearing on 5-12-83 at Hyderabad. On 5-12-83 also, she asked for pardon, but her request was rejected, and by an order dated 15-12-83, she was dismissed from service. The petitioner filed an appeal dated 4-1-84 which was heard by the Executive Director of the bank on 13-1-84. Even before the appellate authority the petitioner pleaded for leniency of punishment, but her appeal was dismissed by an order dated 22-2-84. Thereafter the petitioner sent a mercy petition to the Chairman of the bank and sought for a personal hearing from the Chairman, which was turned down. The punishment of dismissal is shockingly disproportionate to the gravity of charges. The petitioner had 16 years of unblemished service. She was released on Probation, being the first offender. Under section 12 of the Probation of Offenders Act, any disqualification attached to the conviction is also removed. It is more than 6 years since she has been suspended from service and more than 4 years since she has been dismissed from service. As the sole bread-winner in the family, she is suffering. This Court has ample powers to interfere with the quantum of punishment imposed by the respondent. The respondent has not taken into account the relevant circumstances before passing the order of dismissal. Therefore, an award may be passed holding that the dismissal of the petitioner is illegal and direct her reinstatement with back wages and continuity of service, and other attendant benefits.

4. The respondent filed the following Counter : The petitioner was working as a Special Assistant in the Mount Road branch of the Bank from 2-8-76 to December, 1981, during which period she was maintaining a Savings Bank A/c. No. 17700 in the name of her daughter Baby Sri devi and other S. B. A/c No. 17706 in the name of her son Minor Srikanth. In the said branch, there was a joint S. B. A/c. No. 3612 in the name of Mr. N. K. Pillai and Smt. Janakiamma and the said account had a credit balance of Rs. 2,101.60 as on 18-8-81. On 18-8-81, the petitioner in the exercise of her powers as Special Assistant, prepared and authorised a debit slip for Rs. 1,500/- towards S.B.A. c. No. 3612 with a fictitious narration to amount issued DD

favouring selves as per letter dated 5-8-1981." and made necessary debit entries in the said S.B.A/c. ledger. In order to get the day book of the branch tallied as on 18-8-1981, she prepared and authorised two credit slips aggregating for a sum of Rs. 1,500/- with the following details :

- (i) Credit slip for Rs. 600/- requisitioning a DD for the like amount in favour of one Shri K. P. Thimmaiah drawn on Mysore Branch and the slip was signed by the petitioner.
- (ii) Another Credit slip for Rs. 900/- towards her daughter's S.B.A/c. No. 17700 with fictitious narration "By S.B.A/c. No. 13612." As authorised by the petition a DD bearing No. 921286/34 for Rs. 600/- drawn on Mysore branch was issued and the said DD was received by the petitioner.

She further made a credit entry for Rs. 900/- in the ledger folio of the S.B.A/c. No. 17700 of her daughter with the narration being By S.B.A/c. No. 13612." The relevant credit slip was fictitious and no amount was transferred from S.B.A/c. No. 13612. Thereupon, out of the said fictitious credit she withdrew a sum of Rs. 800/- on 18-8-1991 from S.B.A/c. No. 17700 by withdrawal slip 634288.

5. On 16-11-1981, she prepared and authorised a credit slip for Rs. 1,000/- towards S.B.A/c. No. 17706 of her son with fictitious narration "By S.B.A/c. No. 7700" and made entries in the said Savings Bank A/c. Ledger folio with fictitious narration "By DD". The credit slip prepared and authorised by her was fictitious in as much as on that day no such amount was transferred from the S.B.A/c. No. 17700. The entry made in the ledger folio of S.B.A/c. No. 17706 was also fictitious in as much as no DD was received at the branch for credit towards the said account on the said day or before that day. However, in order to get day book tallied as on 16-11-1981 she also prepared and authorised a correspondent debit slip for Rs. 1,000/- towards S.B.A/c. No. 17094 of Mr. Vasudevan with fictitious narration "To amount transferred to S.B.A/c. No. 17760". This debit entry was not made towards S.B.A/c. No. 17094. The debit slip prepared and authorised by her was fictitious in as much as S.B.A/c. No. 17094 related to R. Mukundan, and not to Vasudevan, and also on the said date no such amount was transferred from S.B.A/c. No. 17094 towards S.B.A/c. No. 17760. The amount of Rs. 1,000 credited towards S.B.A/c. No. 17706 was withdrawn by her as under :

- (i) Rs. 700/- on 16-11-1981 vide withdrawal receipt No. 782433.
- (ii) Rs. 150/- on 19-11-1981 vide withdrawal receipt No. 782523.
- (iii) Rs. 150/- on 20-11-1981 vide withdrawal receipt No. 782547.

All the above withdrawal slips were authorised by her for payment and accordingly payment was made.

6. In the Mount Road Branch, one K.V. Umaphathy, was maintaining S.B.A/c. No. 20399 which account had as on 7-12-1981 a credit balance of Rs. 3,301/-. On 7-12-1981 Rs. 3,200/- was withdrawn from the said account (vide withdrawal slip No. 783165) and the said amount was received by the petitioner. On or about 8-12-1981 she made a fictitious credit entry for 3,200/- in the ledger account folio of the said S.B.A/c. and also in the pass book held by the depositor with fictitious narration "By cash". The said credit entry made by her was fictitious in as much as on that day the bank did not received the like amount for credit towards the said account. Out of the amount fictitiously credited to the account a sum of Rs. 2,000/- was withdrawn on 11-12-1981 (vide withdrawal slip No. 783149). The said withdrawal slip was authorised by her. On 18-12-1981 she credited a sum of Rs. 3,200/- towards Suspense A/c. maintained in the branch by recording the following particulars in the relevant credit slips. "Being the amount due to S.B.A/c. No. 20399 of Shri Umaphathy not credited on 8-12-1981 by me now credited as advised by Inspector".

7. The petitioner was served with charge sheet dated 31-5-1983 charging her with misconduct of doing an act prejudicial to the interest of the Bank under Clause 19(5)(f) of the Bipartite settlement. The petitioner not only gave a reply on 30-6-1983 admitting her guilt but also pleaded

guilty to the charges in the domestic enquiry held on 27-9-1983. The Enquiry Officer gave a report holding that the charges were proved. The petitioner was informed of the proposed punishment and was asked to appear for a personal hearing. The petitioner gave a written representation pleading guilty. The Disciplinary Authority considered her representation, and she was dismissed from service. The dismissal order is fully justified. After more than two years, on 29-5-1986 petitioner raised an Industrial Dispute. This dispute should not have been referred in view of delay and laches. Hence, the reference itself is bad because of the delay and laches on her part. The petitioner abused her position as a Special Assistant, made fictitious entries and misappropriated money. The respondent being a financial institution, such misconduct could not be countenanced. The continued employment of the petitioner would pose very serious security risk to the funds of the Bank's constituents and therefore, she is not entitled to any relief much less the relief reinstatement. The misconduct being grave, there was little scope for any lenience or compassion. Therefore, this Court should not interfere with the punishment of dismissal. Therefore, an award may be passed upholding dismissal of the petitioner.

8. Even before this Tribunal the Petitioner did not raise any question as to the fairness of the enquiry or the misconduct attributed to her. The only point urged before me is also that the punishment is severe and disproportionate to the misconduct.

9. Therefore, the only issue that arises for consideration is :

Whether the punishment of dismissal imposed upon the Petitioner is justified and if not to what relief is the petitioner entitled ?

10. The Point : As mentioned already, the petitioner was working as a Special Assistant in the Bank and while discharging her duty as such, she falsified the books of accounts of the Bank and misappropriated money. The petitioner admitted the charges levelled against her but pleaded for a lenient treatment, but she was dismissed from service. In the criminal proceedings she was found guilty of charges under Section 420 and 477 A) of the Indian Penal Code, convicted but released on probation under Section 4(i) and (iii) of the Probation of Offenders Act. The learned counsel for petitioner contended that though, under Section 10 of the Banking Regulations Act, No banking company shall employ or continue the employment of any person who is or has been convicted by a Criminal Court of an offence involving moral turpitude, in as much as the petitioner has been released on probation under Section 4(i) and (iii) of the Probation of Offenders Act the disqualification does not attach to the petitioner, and therefore, this Tribunal can still interfere and hold that the punishment is not justified. But, this is a case where the Respondent-Bank has not dismissed the petitioner from service on the ground that she has been convicted by a Criminal Court of an offence involving moral turpitude. This is a case where a domestic enquiry was held against the petitioner in which the petitioner has admitted that she is guilty of not only falsification of the accounts but also of misappropriation of the Bank's funds. Of course on the same charges she has been convicted by the Criminal Court. Therefore, even leaving aside the conviction by the Criminal Court the petitioner is on her own admission in the domestic enquiry guilty of falsification of the accounts and the misappropriation. Further, the conviction by the Criminal Court is not for an offence unconnected with the Bank's business. The Bank found her to have misappropriated the bank's funds and for that purpose to have falsified the accounts of the banks. A domestic enquiry was conducted and the petitioner has admitted these misconducts attributed to her. So, in the domestic enquiry she was found guilty of serious misconduct. Therefore, even if it is considered that no disqualification attached to her in view of the conviction by the Criminal Court, the petitioner is liable to be punished for the misconduct established in the domestic enquiry. The misconducts attributed to her is very serious i.e. misappropriation of the bank's funds, and falsification of the Books of Accounts of the bank in an attempt to cover up or to facilitate the misappropriation. When the respondent happens to be a Bank dealing with the money of its constituents, honesty is the backbone among the essential qualities that are expected of an employee, in such a financial institution. So a person who is



found to be lacking in this quality has no place to be there. The learned counsel for the respondent relied upon the decision in GUJARAT STATE ROAD TRANSPORT CORPORATION Vs. KACHRAJI MOTILJI PARMAR (1993 LLR 555) in support of his contention that in the case of misappropriation of funds, dismissal from service will be justified.

11. Therefore, taking into consideration all these factors, I find that the dismissal of the petitioner from service is justified and that the petitioner is not entitled to any relief. Award is passed accordingly. No costs.

Dated, this the 30th day of August, 1993.

THIRU K. SAMPATH KUMARAN, Industrial Tribunal.

#### LIST OF WITNESSES EXAMINED

For both sides : None.

#### LIST OF DOCUMENTS MARKED

For Worker :

Ex. W-1/30-1-85 : Copy of Judgment in CC-11281/84 on the file of the II Metropolitan Magistrate, Madras.

For Management :

Ex. M-1/31-5-83 : Charge sheet issued to the Petitioner-Worker (Xerox copy).

Ex. M-2/7-10-83 : Finding of the Enquiry Officer (Xerox copy).

Ex. M-3 : Extract of Section 10 of Banking Regulations Act (Xerox copy).

नई दिल्ली, 9 फरवरी, 1994

का. आ. 656. — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, सैमर्स सैन्ट्रल माईन प्लानिंग एण्ड डिजाईन इंस्टीट्यूट निमि. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 2), धनवाद के पंचपट को प्रकाशन करती है, जो केन्द्रीय सरकार को 7-2-94 को प्राप्त हुआ था।

[सं. एन.-20012/133/91-आई. आर. (कोल-1)]

सी. गंगाधरन, डेस्क अधिकारी

New Delhi, the 9th February, 1994

S.O. 656.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2), Dhanbad as shown in the Annexure in the industrial dispute between the employees in relation to the management of M/s. CMPDI Ltd. and their workmen, which was received by the Central Government on 7-2-94.

[No. 1-20012/133/91-IR(C.I)]

C. GANGADHARAN, Desk Officer

#### ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Reference No. 152 of 1991

PRESENT :

Shi B. Ram,  
Presiding Officer.

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act., 1947.

#### PARTIES :

Employers in relation to the management of CMPDI Ltd. and their workmen.

#### APPEARANCES :

On behalf of the workmen : Shri D. Mukherjee, Secretary, Bihar Colliery Kamgar Union.

On behalf of the employers : Shri B. Joshi, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dhanbad, the 31st January, 1994

#### AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. 1-20012 (153)/91-IR.(Coal-I), dated, the nil.

#### SCHEDULE

"Whether the action of the management of M/s. Coal Mine Planning & Design Institute Ltd. in terminating the services of the workmen S/Shri Dadan Prasad, Somnath Biswas and Anil Kumar Pd. Survey Mazdoors w.e.f. 24-2-89 is justified? If not, to what relief the said workmen are entitled?"

2. The action the management of M/s. CMPDI Ltd. has been challenged in terminating the services of the workmen namely Shri Dadan Prasad, Somnath Biswas and Anil Kumar Pd. Survey Mazdoors with effect from 24-2-89.

3. The concerned workmen claim to have been working as permanent Channan/Survey Mazdoors at CMPDI since 14-1-82, 17-7-1980 and April, 1983 respectively against permanent vacancy to the satisfaction of the management. It is alleged that the management with ulterior motive did not allow them to complete 240/190 days attendance in a calendar year.

1. It is the further case of the workmen that the management allowed junior workmen to complete 240/190 days attendance and they were accordingly regularised which smacks anti-labour policy of the management. The concerned workmen were stopped from their work with effect from 24-2-89 illegally and arbitrarily against the provisions of the Standing Orders. They have played for their regularisation with full back wages and consequential benefits.

5. The management denied the claims of the concerned workmen and submitted that the management undertakes survey work at different places for the purpose of prospecting planning and designing project. As the projects are to be planned in a new area the area requires to be surveyed and the coal reserves are required to be ascertained by making bore holes and ascertaining availability of coal at a particular area. Again in the new area it becomes necessary to clear the survey line for the purpose of establishing survey points. While cleaning the survey line and also for cutting jungles and herbageous growth the management has been engaging survey mazdoor on casual basis as per requirement. It is stated that this survey work is not carried out throughout the year and on all days of a month. The management stated that the concerned workmen were engaged as Survey Mazdoors with in region No. 2 of the management purely on casual basis. They were paid their wages on daily rated basis, and they did not put 240 days attendance in a calendar year. Admittedly the maximum number of days employed by them will be below 150 days in a calendar year. They were engaged for fixed duration and after expiry of that duration their services automatically stood terminated. Subsequently as per necessity the concerned workmen were again given chance to work as casual mazdoor for specific duration. In this way they worked intermittently if and when required. The management did not terminate the services of the concerned workmen but they were automatically disengaged after the expiry of the stipulated period in accordance with the contract of service. However, the management submitted that it cannot refused to keep the concerned workmen in employment as casual mazdoors if and when occasion will arise but they cannot claim their engagement as a matter of right.

6. While giving parawise reply to the W.S. of the workmen it was submitted that no casual survey mazdoors were regularised in Region No. 2 of the management. Admittedly, some casual workmen were regularised at different establishment of different region after taking into consideration the number of days employed by the casual workmen and availability of the work in that region. It was submitted that the workmen namely Shri B. P. Singh and 10 others were working at drilling camp at Parbatpur as casual General Mazdoors and they have completed more than 240 days attendance. It was prayed that the concerned workmen in the circumstances of the case have got no case and they are not entitled to any relief.

7. The question for consideration would be as to whether the concerned workmen are entitled for their regularisation with full back wages ?

8. The concerned workmen claim to have been working as Survey Mazdoors against permanent vacancies for the last 7 years but we have no documentary evidence to prove and substantiate this fact. On the other hand the management has proved the appointment letters which are marked Ext. M-1, M-2 and M-3. Ext. M-1 dt. 19-12-86 is with respect to Shri Dadan Prasad one of the concerned workmen. This appointment letter speaks of simple engagement for 30 days only. The terms of appointment starts as follows :—

"This offer is purely temporary against casual nature of work and will stand automatically terminated on expiry of 30 days employment. The jobs will be provided as and when available.

This offer will not carry any claim or right in future for any regular appointment in the company. You are advised to report for duty to."

The appointment letters with regard to other concerned workmen are on the same terms and conditions. These appointment letters state in a very clear terms that engagement will be on purely temporary against casual nature of work and it will terminate automatically on expiry of the duration. MW-2 is Shri S. D. Sharma who was in CMPDIL since 1976 to 1990 and, here he was entrusted with the project work. He stated that in order to fulfil the project work they were required to engage some survey mazdoor on casual basis to help permanent workmen. The concerned workmen were also engaged on temporary/casual basis. In cross-examination he stated that the concerned workmen were working as general mazdoor and not as survey mazdoor. Sri WW-1 Sri Dadan Prasad stated that they were working as Chainman-cum-survey mazdoor. However in cross examination he stated that they were provided with appointment letter in 1986. They were quite aware of their designation as mentioned in their appointment letters. He also admitted to have worked as per his appointment letter. In view of this evidence it is made clear that the concerned workmen worked as casual labour on casual basis. In the appointment letter there is no whisper that they were engaged as Survey Mazdoors.

9. MW-1 Shri N. Mishra, Sr. P.O. was working in CMPDIL since 1990. In cross-examination he stated that planning and design are permanent nature of job. He also stated designated as Chainman-cum-survey mazdoor etc. The been designated as Chainman-cum-survey mazdoor etc. The main function of the surveyor is to survey the mine of adjacent land, ropeway. He added that for the purpose of surveying the presence of Chainman and survey mazdoors are necessary. He further stated that the work of surveyor, survey mazdoor and chainman is of permanent nature. Now from the evidence of this witness it is made clear that the work of survey mazdoor is of a permanent nature. But the question is whether the concerned workmen ever worked as survey mazdoors. Their appointment letters, which the concerned workmen also admit, show that they were engaged on casual basis to do casual work. Admittedly, as per evidence of this witness the names of the concerned workmen cannot be found in the Form B Register. In my

view that will not make any difference. It is nowhere the case of the concerned workmen that they have been shown as survey mazdoors in the Form B. Register.

10. Regularisation of the casual workmen was not very foreign to the management of CMPDIL. The management admitted that even casual workmen could be regularised provided they were in continue service as defined under Section 25B of the I.D. Act. It is the consistence case of the management that that the concerned workmen never completed 240 days attendance in a calendar year. The concerned workmen did not produce any document to prove that they were in continuous service. WW-1 stated that he used to perform duty roughly 225 to 230 days attendance in a calendar year. The question is if the work was continuous and the management intended to victimise the concerned workmen by not allowing them to complete 240 days attendance, then in case of stoppage of the concerned workmen from their duty some other must have been engaged. There is no evidence as to who worked in place of the concerned workmen even for a few days. In the circumstances the allegation that the concerned workmen were not allowed to complete 240 days attendance merits no consideration. Ext. M-4 series are the photo copy of the contingent labour bills showing number of days worked by some of the concerned workmen. The days are not adequate to complete the requirement of continuous service. Similarly Ext. M-5 is the attendance chart showing attendance of some of the concerned workmen in different years. The attendance as shown falls short of the basic requirement of continuous service.

11. The learned counsel for the management has relied upon the authority reported in FLR 985 at page 481. Their Lordships of the Hon'ble Supreme Court held as follows :—

"The expression which we are required to construe is 'actually worked under the employer'. This expression, according to us, cannot mean those days only when the workmen worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc."

That was a case in which the workman had joined the services of American Express International Banking Corporation on 4-11-1974 as a Typist Clerk in temporary capacity and was employed as such, with a number of short breaks till 30-10-1975. According to the workman he had worked under the employer for 275 days during the period of 12 months preceding 31-10-1975 whereas according to the management he worked for 270 days only. The only different was that the workman had included and counted Sundays and other paid holidays while the employer did not do so. In the present reference it is nowhere the case of the concerned workmen that they were paid for Sundays and holidays. Since they they were doing as casual workmen they got their payment as per the days worked by them. It is not that they were getting their monthly wages.

12. I have examined various aspects of the matter and on the basis of the discussion made above the concerned workmen deserve no consideration for any relief. However, the management has stated in para-10 of the W.S. that it cannot refuse to keep the concerned workmen in employment as casual mazdoor as if and when occasion will arise but as a matter of right they cannot claim for their engagement in future. In view of such statement the management is directed to keep the concerned workmen in employment if and when the occasion will arise and also to consider the desirability of their regularisation in the services if they qualify the test of continuous service in future.

This is my award.

B. RAM, Presiding Officer

नई दिल्ली, 10 फरवरी, 1994

का. आ. 657.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मै. भारत कोकिंग कोल लिमि. की धनुडीह कोलियरी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, (सं. I), धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-2-94 को प्राप्त हुआ था।

[सं. एल-20012/2/89-आई. आर. (कोल-I)]  
सी. गंगाधरन, डेस्क अधिकारी

New Delhi, the 10th February, 1994

S.O. 657.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal (No. 1), Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Ghanoodih Colliery of M/s. BCCL and their workmen which was received by the Central Government on 9-2-94.

[No. L-20012/2/89-IR(Coal-I)]

C. GANGADHARAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947.

Reference No. 119 of 1989

PARTIES :

Employers in relation to the management of Ghanoodih Colliery of M/s. BCC Ltd.

AND

Their Workmen

PRESENT :

Shri P. K. Sinha,

Presiding Officer.

APPEARANCES :

For the Employers : None.

For the Workmen : None.

STATE : Bihar . . . . . INDUSTRY : Coal

Dated, the 20th January, 1994

AWARD

By Order No.L-20012/2/89-I.R.(Coal-I), dated 5-10-1989, the Central Government in the Ministry of Labour, has, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the management is justified in superannuating Smt. Sundari Cope, O.B.R. Regional Store, Ghanoodih Colliery of M/s. BCCL w.e.f. 15-7-1989 ? If not, to what relief the workman is entitled?"

2. After receipt of the order of reference the parties filed their respective written statements. Thereafter on the prayer of the parties some adjournments were given to them for filing rejoinders and documents.

3. Thereafter by a petition dated 2/4-3-1994 the concerned workman prayed before this Tribunal to pass no dispute award since she was not interested to contest the case.

4. Therefore, I find that there exists no dispute between the parties. In the circumstances, I hereby pass a 'no dispute award' in the present case.

P. K. SINHA, Presiding Officer

नई दिल्ली, 11 फरवरी, 1994

का. आ. 658.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मै. भारत कोकिंग कोल लिमि. की लेकडीह कोलियरी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, (सं. I), धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-2-94 को प्राप्त हुआ था।

[सं. एल-20012/73/85-डी-3(ए)/आई.आर. (कोल-I)]

सी. गंगाधरन, डेस्क अधिकारी

New Delhi, the 11th February, 1994

S.O. 658.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal (No. 1), Dhanbad as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of Laikidih Deep Colliery of M/s. B.C.C.L. and their workmen, which was received by the Central Government on 11-2-1994.

[No. L-20012/73/85-DIII(A)/IR(C.I.)]

C. GANGADHARAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under Sec. 10(1)(d) of the Industrial Disputes Act, 1947.

Reference No. 1 of 1991

PARTIES :

Employers in relation to the management of Laikidih Deep Colliery of M/s. Bharat Coking Coal Limited.

AND

Their Workmen,

PPRESENT :

Shri P. K. Sinha, Presiding Officer.

APPEARANCES

For the Employers : Shri B. Joshi, Advocate.

For the Workmen : Shri S. Bose, Secretary, Rashtriya Colliery Mazdoor Sangh.

STATE : Bihar:

INDUSTRY : Coal.

Dated, the 19th January, 1994

AWARD

With reference to the present industrial dispute the following reference was made to this Tribunal by the Government of India, Ministry of Labour, by Order No. L-20012(73)/85. D.III(A)/IR(Coal-I), dated 9-1-1991 :

"Whether the action of the management of Laikidih Deep Colliery of M/s. Bharat Coking Coal Ltd., P.O. Chirkunda, Distt. Dhanbad in stopping Shri Rajendra Singh and 60 others from work with effect from

January 1983 is justified? If not, to what relief are the concerned workmen entitled?"

2. On behalf of the concerned workmen, appearance was made by the Rashtriya Colliery Mazdoor Sangh through its Secretary and a written statement on behalf of the workmen was filed stating, *inter alia*, that 61 workmen and 15 others were engaged by the management of Laikdi Deep Colliery (hereinafter referred to as the management). On various dates during the moonsoon season of 1980 for protective work on the surface, and in the underground of the mine, which job was continued throughout 1980 to 1982, the aforesaid workmen approached the management for regularisation of service and payment to them at least at Category-I rate of wages, with fringe benefits.

3. It was averred that the workmen aforesaid were performing the duties which were permanent and essential in nature, such as cutting and removing stonebands, digging trenches, digging of drains in the underground, performing drivage of drifts as well doing other underground duties including screening out stone blocks from coal and stacking those, which aforesaid jobs were in higher category of pay scale but the workmen were not paid even the minimum pay scale which belonged to Category-I workers.

4. It was further claimed that the workmen and their Union represented several times before the management for fixation of wages at least at Category-I rate as long their designation was not decided, to which the management assured to regularise their job gradually, but did not live upto its assurance.

5. The Union submitted to the management at the end of 1982 that the workmen aforesaid had completed the requisite number of attendance in that calendar year which entitled them to be confirmed as permanent workers. But the management stopped the workmen from duties at the end of January, 1983. Further discussion between the Management and the Union failed to bring about any result at which, in July, 1984 the workmen raised the issue before the Asstt. Labour Commissioner (Central), Dhanbad, who invited the parties for discussion and held conciliation proceedings which ended in failure and a report of the failure was sent to the Ministry of Labour, Govt. of India. But the Ministry of Labour, by letter dated 31-10-85 declined to refer the dispute for adjudication against which the Union made representation to the Central Govt., in the Ministry of Labour at which the Union and the Management of M/s. Bharat Coking Coal Ltd. were afforded an opportunity to express their views about the reference. Thereafter, the present reference to this Tribunal was made.

6. The Union has requested for an award declaring that the action of the management in stopping the services of Rajendra Singh and 60 others was not justified and that those workmen were entitled to be reinstated with full back wages with effect from 1-2-1983, till they resume their duties, with consequential benefits. It was prayed that the appropriate rate of wages should be fixed and that the management should be made to pay the cost.

7. The management made its appearance and filed its written statement stating therein that the sponsoring Union had made representation before the Asstt. Labour Commissioner (Central), Dhanbad, in July, 1984 to the effect that Rajendra Singh and 40 others should be treated as workmen of the management, after which the Central Government examined the report of the Asstt. Labour Commissioner (Central), Dhanbad, and declined to make a reference to the Industrial Tribunal as it found that Rajendra Singh was a Contractor and the rest 40 persons were his workmen. Thereafter, the sponsoring Union changed its stand and put out a new case that Rajendra Singh and 60 others were working on protective jobs and were stopped from their duties when they demanded regularisation as Category-I Mazdoor. The written statement further points out that the present reference adds more persons, while deletes the names of some persons from the old list of 40.

8. It has been denied that any of the aforesaid 61 persons was a workman of the management and that any one was stopped from his duty with effect from January, 1983. It

has further been submitted that Rajendra Singh was awarded contract for driving an Inclined Shaft from Laikdi Seam Top Section to Jograd Seam, by work order dated 18-3-1982 after his tender was accepted and he had deposited the earnest money of Rs. 5000. Rajendra Singh then carried the work, which was a temporary contract, and was completed within two months, for which the contractor had recruited his own workmen, paid them wages and terminated their services after the job was over. The payment for the work done was made to Rajendra Singh by the management. Rajendra Singh had supervised his own work. It is further submitted that for completion of work Rajendra Singh had engaged 40 workmen and it was he who raised the dispute through the Union for those 40 workmen, the number of which was further increased to 60.

9. The management also has submitted its parawise rejoinder to the written statement filed on behalf of the workmen, denying this allegations contained therein in accordance with the assertion of the management, already reproduced. In parawise rejoinder it has been claimed that there was no record to show that 60 concerned workmen and 15 others had worked during moonsoon season of 1980 on any kind of work. It has been denied that Rajendra Singh was awarded any contract for doing any of those works which the Union has claimed in its written statement that those 61 workmen were doing.

10. It has further been claimed that the Union has made an attempt to get these persons inducted in service with the help of the contractor, Rajendra Singh, after his contract work was over. It has also been claimed that there was no *prima facie* case for referring the present dispute.

11. In its written statement and its rejoinder the management has also denied other allegations of the workmen and their Union.

12. The workmen, through the Union, filed rejoinder to the statement of the management in which its earlier stand has been reiterated. Here it has also been claimed that those persons were engaged in a group of 20 for each of the three shifts, with one overall Supervisor to co-ordinate the work in different shifts in the underground.

13. It has been pointed out in this rejoinder that since the job performed were in the prohibited category under the provisions of Contract Labour (Abolition & Regulation) Act, 1970 (hereinafter referred as 1970 Act), no contractor could have been engaged by the management for performing the duties as assigned to these workmen. It has been denied that Rajendra Singh was over engaged as contractor in respect of permanent nature of job for which neither the management nor Rajendra Singh had obtained licence from the authorities as provided under 1970 Act. Perhaps, here the Union means to say, so far the management is concerned, that it was not duly registered as provided under 1970 Act.

14. It has also been claimed in the rejoinder that Rajendra Singh was engaged by the management to co-ordinate the duties of the concerned workmen during the three shifts under the instruction from the superior officers. It has been claimed that Rajendra Singh was a workman like 60 others and had to perform duties under the control of the management. Prayer has been made to pass an award in favour of the workmen.

15. According to the case of the management, Rajendra Singh was awarded a contract for driving an Incline Shaft from Laikdi Seam Top Section to Jograd Seam by work order dated 18-3-82 for which his tender was earlier accepted and he had deposited the earnest money as per directive dated 12-2-82. It has been argued before me that this was a work which could be done through contractor as such work was not prohibited by the appropriate Government for employment of contract labour. It was argued that if Rajendra Singh was employed on such a contract work, then he had to engage his own workers and there could not have been any direct relationship of employer and employee in between the management and the contractor, or the labour force engaged by the contractor.

16. Here I may state that no notification of the Central Government has been shown, issued under sub-section (1) of Section 10 of the 1970 Act, prohibiting employment of contract labour for doing the work of driving incline shaft. But it will appear that by their Notification No. S.O. 488 dated 1-2-1975, the Central Government had prohibited employment of contract labour in some works including miscellaneous stone cutting underground as well driving of the stone drifts.

17. I will first take up the case of Rajendra Singh because his case stands on the footing different from the rest 60. In so far as his case is concerned, I find that there is enough documentary evidence on the record to show that during the period under reference, and beyond it, Rajendra Singh had worked as contractor.

18. Ext. M-1 is a letter issued by the General Manager of M/s. B.C.C. Ltd. intimating Rajendra Singh, who was addressed at Laikdih Deep Colliery, award of work of driving drift for sand bunker at Laikdih Deep Colliery. This is dated 4-5-84. This has been produced by the management to show that even after the period relevant to this reference matter, Rajendra Singh had continued to work as a contractor. Ext. M-4 relates to the relevant period which is a similar letter issued by M/s. B.C.C. Ltd. dated 3-7-1982 awarding work to Rajendra Singh, shown as contractor at Laikdih Deep Colliery, for stone drivage in that very colliery. This work awarded to him was worth Rs. 35,712.

19. Ext. M-3 is a register containing three pages relating to payment of part bill, to Rajendra Singh, which is dated 27-8-87.

20. Here I may mention that I am discussing the exhibits as they have been marked but the documents relating to the relevant period would be apparent. Ext. M-3/I is another register containing similar nature of papers relating to payment of bills which are dated 2-6-1986.

21. Ext. M-5 is another photo copy which relates to 2nd R.A. Bill in favour of Rajendra Singh which shows that the concerned work had commenced on 3-7-82 and was still in progress when the measurements were taken on 20-5-83. It appears to have been signed by the authorities on 24-6-83 and this also bears the signature of Rajendra Singh. Ext. M-5/I is photo copy of the similar document signed on 17-9-82, as also signed by Rajendra Singh. Ext. M-6 is carbon copy of a bill for payment in favour of Rajendra Singh, Laikdih Deep Colliery. This is dated 18-10-83. Ext. M-7 is the similar document relating to the payment of bill dated 18-10-83. It will appear that Ext. M-6 and M-7 are the same and similar documents.

22. Likewise, Ext. M-7/I, dated 19-11-82 is another bill for payment to Rajendra Singh, described as contractor at Laikdih Deep Colliery. This is accompanied with R.A. Bill signed by Rajendra Singh also.

23. Ext. M-8 is photo-copy of running bill in favour of Rajendra Singh which appears to have been signed on 8-12-81. Ext. M-8/I is a document relating to release of security deposit which is in the name of Rajendra Singh. This appears to have been signed by the authorities in February, 1984. It will also appear that Rajendra Singh had signed on the revenue stamp.

24. Ext. M-9 is another pay order dated 29-1-82 in favour of Rajendra Singh.

25. Ext. M-10 is another bill dated 24-7-84 submitted by Rajendra Singh for another work, i.e., complete cleaning of mud and ash of the Lancashire Boiler. Ext. M-10/I is another copy of the same document.

26. Ext. M-11 is also a bill dated 11-9-84 drawn in favour of Rajendra Singh.

27. Ext. M-12 is work order dated 12-3-82 for drivage of one inclined shaft from Laikdih Seam Top Section to Jagrad Seam at Laikdih Deep Colliery in which the work was awarded to Rajendra Singh, styled as a contractor, which work was worth of Rs. 278653.32. Ext. M-13 is a letter submitted

by Rajendra Singh to the Area Finance Manager about deposit of Rs. 5000 being the earnest money of the tender for which work order was issued through Ext. M-12.

28. Ext. M-14 is a note submitted by the Sr. Survey Officer requesting the General Manager to refund the security deposit of Rs. 5000 to Rajendra Singh relating to the work order (Ext. M-12). This shows that the work could not be executed during the long period due to heavy roof fall which could not be cleared for approach road for the above drivage of the shaft.

29. Ext. M-15 series are the Form 'C' Register relating to attendance of the contractor's workmen. Anyway, the documents in Ext. M-15 series have not been touched in course of argument on behalf of the workmen, or the Management.

30. MW-1, Kapadev Sood, who was an officer in the Laikdih Deep Colliery during the concerned period and who had worked as Manager during 1980 to 1982, and who has proved all these documents, has denied that Rajendra Singh and 60 others were the regular workmen of the colliery. He submitted that attendance register would disclose the names of the contractor's workmen. From Ext. M-15 series it is not clear as to whether they relate to the workers of Rajendra Singh or/and other contractors. I have gone through these registers and could not find any entry relating to the attendance of any 20 workmen who are the claimants, working together, regularly, in a particular shift.

31. The documents would show that Rajendra Singh had worked as contractor during the relevant period, as also thereafter. During the same period he could not be a regular workman as well a contractor doing contract work in the same colliery where he claims to be a regular employee.

32. It has been claimed before me that Rajendra Singh was not at all a licensee under Section 12 of 1970 Act, nor the employers were registered under Section 9 of 1970 Act. But the sponsoring Union, in its rejoinder, has not expressly claimed that the employers were not registered under Section 9 of the Act, though in para 8 it has been mentioned that neither Rajendra Singh nor the management had obtained licence from the authorities as provided under 1970 Act.

33. Be that as it may, if the management had violated the provision under Section 9, and the contractor under Sec. 12 of the 1970 Act, then the only consequence that could have followed was a penal action as provided under 1970 Act. Mere fact that provision of either Section 9 or 12 of the 1970 Act have been violated would not ipso facto establish a relationship of employer and employee between the parties. For this, reference may be had to the decision of Hon'ble Supreme Court in the case of Dinanath and others Vs. National Fertilizer Ltd and others (1992 Lab. I.C. 75).

34. Though the documents referred to above contradict the claim of the sponsoring Union that Rajendra Singh was employed by the management on regular basis to do permanent nature of work, as claimed, yet the evidence of Rajendra Singh himself should also be discussed in this context. Rajendra Singh is WW-2 who has claimed that all the concerned workmen including himself had started working in Laikdih Deep Colliery in the year 1980 when they were engaged in the rainy season for cutting drains on the surface. Their attendances were recorded in the books maintained by the management and they got payment of wages from the cash counter of the management. After the rainy season they were deployed to underground mine where 20 of the concerned workmen used to be deployed in each of the three shifts. He further stated that he was deployed to all of them to the place of work and to arrange for marking their attendance and for doing other sundry jobs. He has claimed that the main duty was stone cutting, besides floor dressing. They also did other works. This witness has denied the suggestion that he was a contractor and other claimants were engaged by him. He admitted that he had no licence for engaging workmen. He denied that in the year 1984 also he got contract work from the management.

35. But in the cross-examination he admitted that he had no letter or document to show that the management agreed

to give him employment in place of his father. During the examination-in-chief he had claimed that his father was labour supply-Sirdar in the same colliery whose services were dispensed with in the year 1974 when the collieries were taken over by the Government. The dependants were then given employment. He has claimed that his father got his name recorded as his dependant for his employment when he came of age. This way he was engaged by M/s. B.C.C. Ltd. in the year 1980.

3. This witness further said, during the cross-examination, that like him, none of the concerned workmen have got any paper to show that the management assured them to give employment in place of relatives working in Laikdi Deep Colliery. In the examination-in-chief this witness had claimed that all the 61 workmen were dependants of the workmen working in Laikdi Deep Colliery.

37. This witness agreed that they had no document or letter of appointment as well no paper to show that they got payment from the management. He further said that except the work order filed in this case they had no other paper to show the nature of job performed by them. He has denied that he was a contractor and submitted bills and received payments. From the evidence of this witness it will also come out that the workmen at Sl. Nos. 41 and 30 had expired.

38. Before parting with this point I would discuss the documents submitted on behalf of the workmen. Exts. W-1 to W-4 are documents to show that under the provision of Section 5 of 1970 Act, the Central Board had constituted a Committee to consider the question of difficulties being faced by Coal Companies in implementing the provisions of Notifications issued under Section 10 of the 1970 Act which Committee, ultimately, (Vide Ext. W-4 submitted a report that both the sides, i.e. representatives of the Trade Unions and the Management, had reiterated their original stand that the reference to the Sub-Committee was not legally maintainable. Ext. W-5 is a Notification issued by the Government of India in the Ministry of Labour dated 21-6-88 in which the employment of contract labour in certain works, in all coal mines, was prohibited which included driving of stone drifts and miscellaneous stone cutting underground. Ext. W-6, which is a typed sheet, gives the names of father of the 61 claimants. This bears no stamp and no signature of any authority of the management or of the sponsoring Union.

39. Ext. W-6/1, which is in two sheets, claims to be the photo copy of statement of attendance put in by the concerned workmen during the years 1980 to 1983 in the underground of Laikdi Deep Colliery. This appears to have been signed by the Vice-President of the sponsoring Union on the first page, and by Secretary of the Union on the second. Pages 1 and 2, it appears, have to be pasted and read together in view of the heading given at the top of these two pages. The heading runs like this : "List of Prohibited Workers who worked in different nature of job in the colliery under supervision of the Colliery Management", but recruited and paid by the private agencies during the year 1980, 1981 and 1982 showing their attendance month-wise and year-wise."

40. In the margin of Ext. W-6/1 on the first page the names of the claimants/workmen, their father's name, their age and address have been given. The address of all have been shown to be "Laikdi Deep Colliery". But there does not appear to be any method in showing as to which of those workmen had worked on which dates. Simply some dates have been mentioned. In the chart, 22 is the highest day. I had invited Mr. S. Bose, Secretary of the sponsoring Union who was arguing on behalf of the workmen, to go through this chart submitted by them and show me as to how the attendance of individual workman could be understood from this chart. Even Shri Bose was unable to say anything in this regard or to tell me as to show this chart shows the attendance of the workmen. Therefore, it appears that even this self-serving document filed on behalf of the workmen is a sheet of confusion. What is not confusing in this chart is the heading given by the sponsoring union which clearly states that this was a list of those workmen who worked under direct supervision of

the colliery management but were recruited and paid by the private agencies. Therefore, this chart admits that 61 workmen shown in the list were recruited and paid by private agencies. This stand is in contradiction to the clear statement of the witness who has admitted, either in the written statement or in the separate rejoinder, that they were employed by some one who may be posing as a contractor, working as a dummy on behalf of the management.

41. Therefore, there is hardly any evidence on the record to show that Rajindra Singh was employed on regular basis, in the year 1980, by the management, had continued working till 1982 and thereafter was stopped from working. There is ample evidence on the record to show that during the relevant period he had worked as a contractor in the same colliery.

42. In so far as the rest 60 workmen are concerned, the matter would be different if they were engaged to perform and were performing duties like driving of stone drifts and miscellaneous stone cutting underground, which they claim to have been doing, even a contract labour, through a contractor. Obviously, such works had been prohibited to be done through employment of the contract labour through notification as mentioned earlier. If the workmen have proved that they had worked for the required period on such permanent nature of job, they would be entitled to relief even if they are shown to have been worked through a contractor. No contract labour could have been employed for such work. Hence if the management employed contract labour for doing the aforesaid permanent nature of jobs, then it must be taken that they had worked directly under the management and if there was any intermediary contractor, he was only used as a ploy to defeat the enactment, rules or orders for prohibiting employment of such labourers in the service of the management, and for the purpose of denying them relevant wages and other benefits which would otherwise have been admissible to them as the regular workmen of the Management. Here, it may be mentioned that Ext. W-5, which was notification under Section 10 of 1970 Act is dated 21-6-88 whereas the dispute relates to the years 1980 to 1982. However, I have also referred earlier notification in this regard, of the year 1975, available in this office, which is relevant.

43. While going through the evidence produced by the sponsoring Union to show that these workmen were employed by the management, I find the same to be too meagre to come at a conclusion favourable to the workmen. It may be noticed here that the case of the workmen is not that they were employed through intermediary contractor for doing any permanent nature of work or for doing a work which the appropriate Government had prohibited to be done through contract labour. Therefore, the onus lay heavily upon the workmen to prove that they actually were employed by the management as they have claimed.

44. I have already discussed the documents produced on behalf of the workmen. I have already stated that Ext. W-6/1 is too confusing to render any help to the workmen. In any case, this is a document which appears to have been prepared by the sponsoring Union.

45. Besides that, the workmen have filed their separate affidavits stating therein their address and the nature of work that they were doing and have affixed their photograph to the affidavits. However, these affidavits appear merely for the sake of identification and mere mention that they were working in a particular capacity cannot be taken as evidence.

46. MW-1 has said in his evidence that in case of an appointment, the management issues letter of appointment as well Identity Card to the workmen. He further stated that the management used to pay its workmen on wage slips earlier prepared manually but later introduced pay slips prepared by machines on the basis of which payments were made and are being made.

47. If any of these workmen had been appointed by the management, they would have been issued appointment letters.



faking, for argument's sake, that they were not issued appointment letters by the management in order to avoid fulfilling their obligation towards duly appointed workmen, even when any workman going underground was to be issued Identity Card. If some payments by way of wages was made to him by the management, that had to be mentioned somewhere in the books of the management. Their attendance must have been marked in some book. It appears that the sponsoring Union has neither produced even one of such document, nor has cared to call for such documents from the management which documents ought to have been in the custody of the management. It may be argued that with the lapse of time such documents had been destroyed after expiry of a certain period, as per the rules, but atleast when the conciliation proceeding was going on, those documents would have been there. Nothing has been produced on the record to show that even then those documents were referred to. Even then, any of these workmen should have the possession of the Identity Card which would have showed his status. But no such document has been filed.

48. Therefore, the case of the workmen hinges upon the evidence of the two witnesses who appear to have been given evidence in representative capacity. I have already said that the evidence of WW-2, Rajendra Singh is not worthy of credence so far his claim that he was not a contractor but a workman during the period, is concerned. Even then this witness admitted in cross-examination that he and other workmen had no document or letter of appointment to show that they were engaged, or to show that they got payment from the management. He has said that save and except work order filed in this they had no other document to show nature of job performed by them. But the only work order type of document that have been filed are the two document including Ext. M-12, which relates to awarding of particular job to Rajendra Singh as contractor. Therefore, the evidence of Rajendra Singh serves neither his purpose nor the purpose of other workmen.

49. Coming to evidence of WW-1 Ram Prasad Yadav, who is one of the claimant workmen, he has stated that during the rainy season of 1980 the management engaged them for productive work and in the year 1981 all of them were deployed to do underground mining job in three shifts. They were divided in the groups of 20 each. He further said that Rajendra Singh, WW-2, used to arrange materials for the job in the three shifts. He further said that all of them used to record their attendance at the Attendance Cabin and took cap lamp from the Cap Lamp Room and that their work was supervised by the Mining Sirdar and Overman. He has claimed that their main duty was stone cutting, floor dressing, construction of drainage, besides other jobs.

50. This witness has claimed that the management had assured them to regularise their services. They had completed more than 240 days of work in a calendar year. At the end of 1982 they submitted application for such regularisation and it came to their knowledge that the management had recommended their case to the Area office for such regularisation, but were informed in January, 1983 that they would be stopped from duty for sometime and would be regularised, if such opportunity came. This way, they were stopped from duty since January, 1982.

51. During cross-examination this witness admitted that they did not get any letter of appointment, Identity Card, or wage slip from the management. He also admitted that they had got only work order issued by the management in the name of Rajendra Singh. He also claimed that the work order would disclosed the nature of job assigned to, and performed by them.

52. So it will appear that this witness has admitted that the work order issued in the name of Rajendra Singh would show (such permanent and essential) nature of job performed by them. But the work orders on the record and issued in the name of Rajendra Singh do not justify this claim. On the other hand, this witness has admitted that they were not issued any employment directly, but they were working through work orders issued in the name of Rajendra Singh.

Moreover, this witness further admitted that it was Rajendra Singh who used to keep account of their attendance and also supervised their job. He admitted that the management used to describe Rajendra Singh as contractor and that papers were prepared in his name.

53. This witness has shown his ignorance about the section or seam or the level to which they were deployed for duty. He further stated that wherever Rajendra Singh used to deploy them, they performed their duties there.

54. A worker who claims to have worked underground atleast for two years should have been able to identify a section in which he worked or atleast one of the sections if he worked in more than one.

55. This witness also admitted that the management called them contractors labour.

56. About Ext. W-6/1 this witness admitted that attendance sheets were not prepared in his presence and he also could not say if those were submitted before the A.L.C. On suggestion given on behalf of the management, this witness said that he could not say that these documents had been brought into existence falsely by the officials of the Union.

57. There is one point which supports the stand of the management that Rajendra Singh was a contractor and other workmen might have been the labourers employed by Rajendra Singh in execution of his work. As per the evidence of workmen witnesses, particularly of WW-1, it is apparent that their claim is that 20 workers, each, worked in three shifts and it was Rajendra Singh who used to arrange for materials for the jobs in all the three shifts, and who supervised their job, and prepared their attendance. Now this Rajendra Singh claimed that he himself was one of the workmen, doing the work like other concerned workmen. It that was so, no management could have asked Rajendra Singh to work every day in all the three shifts, providing materials to other workmen, supervising their work, and making their attendance. But this he could have done if he was a contractor and was responsible for the work of 60 workmen who might be performing the contracted work in different shifts.

58. Therefore, the only support which the case of the workmen gets is the oral evidences of two claimants workmen, if only their examination-in-chief is taken into consideration, divorce from the cross-examination. If on such evidence the prayer of the claimants for employment is allowed then, in my opinion, this will only bring about industrial anarchy, because then many would be tempted to make such a claim and take the witness stand to give self-serving statement as the only proof in support of such claim.

59. Mr. S. Bose, while arguing on behalf of the workmen relied on a decision of Hon'ble Supreme Court reported in 1978 Lab. I.C. 1264 = AIR 1978 SC 1410 (Hussainbhai Vs. The Alath Factory Terhilah Union and others). Shri Bose argued that according to this decision simply because the workers were found to be working through a contractor will not necessarily deny existence of relationship of employer and employee between the Management and the workers.

60. But the facts of that decision are not strictly applicable to the present case. In that case it was established that the work done by the workmen was an integral part of the industry concerned and they were under the control of the management. But here it is not claimed by the sponsoring Union that the workers were working through any contractor. In this case there is hardly any reliable evidence to prove that the workmen were engaged in any of the prohibited nature of work or had worked in any permanent nature of job for a particular period, under the management. There is no evidence on record to show that the concerned workmen were employed by the management. Therefore, neither the aforesaid decision, nor anything that is on the record, tends to support the claim of the sponsoring Union.

61. In view of the aforesaid, I find that the sponsoring Union has failed to prove that the concerned workmen were actually employed by the management and were doing some work of permanent nature for which employment of contract

labour was prohibited by the appropriate Government under a notification issued in terms of Section 10 of the 1970 Act. Therefore, if under such circumstance the management of Laikdih Deep Colliery of M/S. Bharat Coking Coal Ltd., P.O. Chirkunda, Dist. Dhanbad had stopped Rajendra Singh and 60 others from work under it, with effect from January, 1983, such act cannot be said to be unjustified. I also hold that in such circumstance the concerned workmen are entitled to no relief.

62. Therefore, the following award is rendered—If Rajendra Singh and 60 others were stopped from work with effect from January, 1983 by the management of Laikdih Deep Colliery of M/s. Bharat Coking Coal Limited, P.O. Chirkunda, District Dhanbad, such action of the management was justified. Therefore, the concerned workmen are not entitled to any relief.

In the circumstances of the case I award no cost.

P. K. SINHA, Presiding Officer

#### ANNEXURE

Sl. No.	Name	Father's Name	Address
1	2	3	4
1.	Rajinder Singh	B. Singh	Laikdih Deep Colliery
2.	Etvari Mia	Habib Mia	"
3.	Banrhi Mahato	Sukar Mahato	"
4.	Sahadeo Mahto	Budhan Mahato	"
5.	Rajindra Singh (2)	D. Singh	"
6.	Etvari Mahato	Churu Mahato	"
7.	Budhan Mia	Nzair Mia	"
8.	Lachman Mahato	Budhan Mahato	"
9.	Kolashwar Singh	Chhotu Singh	"
10.	Nour Mia	Borhan Mia	"
11.	Sukar Balhi	Toko Barhi	"
12.	Mahesh Singh	R.N. Singh	"
13.	Upendra Prasad	Rohan Ram	"
14.	Rampratap Yadav	Baramdeo Yadav	"
15.	Manoj Kumar Singh	Mathura Singh	"
16.	Sri Ram Yadav	Ram Lagan	"
17.	Subhas Chandra Singh	R. Singh	"
18.	Inderjit Banerjee	S.P. Banerjee	"
19.	Avijit Banerjee	Jiban Banerjee	"
20.	Binoy Kr. Choudhury	B.K. Choudhury	"
21.	Santi Kr. Chakraborty	B.H. Chakraborty	"
22.	Samar Chakra-borty	Sahadob Chakra-borty	"
23.	Kamalendu Raj	K.M. Roj	"
24.	Sagar Chandra Mondal	S.B. Mondal	"
25.	Joy Kishun Dubey	H.N. Dubey	"
26.	Santorh Singh	Ramahai Singh	"
27.	Deb Das Hazra	G.P. Hazra	"
28.	Mathura Paswan	Gopi Paswan	"
29.	Pradip Banerjee	Pabitra Banerjee	"
30.	Gurdayal Singh	Sohan Singh	"
31.	Krishna Paswan	B. Paswan	"
32.	Ashok Kumar Dey.	Lakehi Kanta Dey	"
33.	Jiban Roy Choudhury	G.P. Roy Choudhury	"
34.	Murahari Singh	Babu Lal Singh	"

1	2	3	4
35.	Debi Das Chatterjee.	S.N. Chatterjee	"
36.	Alok Chatterjee	Harinaran Chatterjee	"
37.	Mahadeb Khotropal.	Dhiren K. Chatterpal	"
38.	Suresh Koot	Basdeo Koot	"
39.	Sarjoo Nath Singh	L. Singh	"
40.	Sukdeo Paswan	Ramlal Paswan	"
41.	Bindia Singh	Mahesh Singh	"
42.	Jyash Dubey	L. Dubey	"
43.	Chandra Sekhar	Muni Lal	"
44.	Sarju Barhi	Yubraj Barhi	"
45.	Satter Mia	Babujan Mia	"
46.	Bablu Chatterjee	Mathan Chatterjee	"
47.	Nirmal Singh	R.K. Singh	"
48.	D.S. Sukhila	A.N. Sukhila	"
49.	S.K. Sukul	A.D. Sukul	"
50.	Anil Singh	Jyoti Singh	"
51.	Basdeo Singh	Bandhan Singh	"
52.	Prabhu Paswan	L. Paswan	"
53.	Bind Kr. Banerjee.	S. Banerjee	"
54.	Arabid Singh	Mahesh Singh	"
55.	Lalan Singh	P. Singh	"
56.	Dol Gobind Roy	G.P. Roy	"
57.	Naresh Prasad Bouri.	R.K. Bouri	"
58.	Indradeo Barma	S. Barma	"
59.	Biswajit Fouzdar	Joy Gopal Fouzdar	"
60.	Romajugir Jaiswal	S.S. Jaiswal	"
61.	Harendra Singh	R. Singh	"

नई दिल्ली, 15 फरवरी, 1994

का. आ. 659 --कोलोका विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में, केन्द्रीय सरकार, मै. भारत कोकिंग कोय लिमि. को खास कुमुण्डा कोलिगरी के प्रबंधन के संबंध विवादों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम, (सं. 2), धनवाद के पंचपद को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-2-94 को प्राप्त हुआ था।

[संख्या एन-20012/335/86-डी-3(ए)/आई.आर (कोल-1)]  
सी. गंगधरान, डैस्क अधिकारी

New Delhi, the 15th February, 1994

S.O. 659.- In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. II), Dhanbad as shown in the Annexure in the industrial dispute between the employees in relation to the management of Khas Kusundha Colliery of M/s. B.C.C.L. and their workmen, which was received by the Central Government on 10-2-94.

[No. L-20012/335/86-D-III(A)/IR(Coal-II)]  
C. GANGADHARAN, Desk Officer

## ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL  
TRIBUNAL (NO. 2) AT DHANBAD

## PRESENT :

Shri B. Ram,  
Presiding Officer.

In the matter of an industrial dispute under Section  
10(1)(d) of the I.D. Act, 1947.

Reference No. 119 of 1987

## PARTIES :

Employers in relation to the management of Khas  
Kusunda Colliery of M/s. Bharat Coking Coal Limited  
and their workmen.

## APPEARANCES :

On behalf of the workmen : Shri B. Lal, Advocate.

On behalf of the employers : Shri R. S. Muthy, Advocate.

STATE : Bihar,

INDUSTRY : Coal.

Dated, Dhanbad, the 3rd February, 1994

## AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 referred the following dispute to this Tribunal for adjudication vide their Order No. J-20012 (335)/86-D.III(A), dated the 14th April, 1987.

## SCHEDULE

"Whether the management of Khas Kusunda Colliery of M/s. Bharat Coking Coal Limited, are justified in stopping S/Shri Rameshwar B. P. Suresh Bhuia, Tipla Bhuia and Tipan Bhuia from work ? If not, to what relief the workmen are entitled ?"

2. The action of the management of Khas Kusunda Colliery of M/s. BCCL has been challenged in stopping the concerned workmen namely Shri Rameshwar B.P. Suresh Bhuia, Tipla Bhuia and Tipan Bhuia from their work.

3. At the very outset it may be mentioned that Suresh Bhuia one of the concerned workman has already expired and this fact finds support from the evidence of WW-2.

4. The concerned workmen claim to have been working in Khas Kusunda colliery as casual workmen from the very beginning. Admittedly sometime in the year 1980 the management took a decision to entertain delisted casual worker who had put in attendance of 75 or more days during the year 1974 to 1976 as casual workmen. It is further admitted that in this process all the concerned workmen were declared eligible for being employed as casual workmen. The concerned workmen also claim to have put in 75 days of work and so they were selected for regular employment. It is further contended that the management pasted a list of workmen who were found eligible just to invite objections if any. Since no objection was made the concerned workmen were given regular employment. It is also stated that the concerned workmen at the time of their regular appointment had produced necessary certificate of their genuineness from the BDO and Mukhiya and the management after having been satisfied provided employment to the concerned workmen. But they were all of a sudden stopped from their work on 30-3-81 on the plea that their address did not agree in the Bonus Register from the address given in their certificates. The concerned workmen claimed that they are genuine persons and they were illegally stopped from their work. They have claimed their reinstatement with full back wages.

5. The management on the other hand has denied the claims of the concerned workmen. A separate WS has been filed. It was stated by the management that the concerned workmen were not genuine persons rather they were impersonators/imposters. It was also stated that the number of attendance put in by them during those period were quite negligible.

6. As regards Rameshwar B.P. it is stated that his father's name as mentioned and the certificates of the BDO and Mukhiya did not tally with the record of the management/colliery. In case of Suresh Bhuia also his father's name did not tally. As regards Tipla Bhuia his home address and other particulars were found different. As regards Tippan Bhuia his home address and other particulars were found different. Since they were imposters the management decided to stop them from their work. In this way it has been stated that the concerned workmen being impersonators are not entitled for any relief.

7. The question for consideration would be as to whether the concerned workmen are entitled for their reinstatement with full back wages ?

8. Admittedly, the concerned workmen were taken into the employment of the management after having found them eligible. MW-2 had occasion to work in Khas Kusunda colliery from December, 1979 to November, 1981 as Manager of the colliery. He admitted that the management had taken a decision to provide employment to the delisted casual workers as badli miner/loaders provided they have completed 75 days of their attendance during the year 1974 to 1976. He also stated that on the basis of such decision the concerned workmen were engaged as Badli miner/loader. He further stated that the concerned workman stated working when some complaints were received by the management that these persons were not genuine and after that they were stopped. According to him some enquiry was conducted before they were stopped. Shri R.A.P. Singh, Personnel Officer had enquired about the matter who after enquiry submitted his report. In this connection we may refer to the evidence of MW-1 R. A. P. Singh who had conducted the enquiry. It is his enquiry on the basis of which the concerned workmen were stopped from their duty. He also stated that some complaints were received by the management that the concerned workmen were not genuine persons. He admitted to have conducted enquiry and submitted report. He has proved his report dt. 2-4-81 which is Ext. M-1. He simply stated that while conducting enquiry he had verified compared the bonus register (Old) with the identification certificates submitted by the concerned workmen. The identification certificates have been marked Ext. M-2 series.

9. I have perused the enquiry report. It does not refer as to who were the complainants. It does not show that any complainant was ever examined. The witness had stated that he had conducted the enquiry as per direction of the Manager but there is no such reference in the report. The witness stated that percentage of the concerned workmen as mentioned in their identification certificate did not tally with the percentages and address of the Bonus Register. The question is what was the percentage and address mentioned in the bonus register did not find any mention in the enquiry report. The report further did not show any of the concerned workmen were ever consulted of their statements were taken by the enquiry officer. In the circumstances I am to hold that the enquiry report which was taken to be the base for stopping the concerned workmen from their duty was most perfunctory one and the management should not have acted upon such reports.

10. MW-2 Shri B. R. Tripathy has also stated that he had also enquired into the matter and submitted a report (M-3). I have perused the enquiry report of Shri Tripathy but it does not show that he had gone to the spot for any enquiry. However, in cross-examination he admitted that during the course of enquiry he did not ask any of the concerned workman. He had no recorded the statement of any co worker nor he had asked any body about the genuineness of the con-

corned workmen. As per the statement he had simply enquired as per basis of the record. In cross-examination he stated that one Shri Jay Singh orally complained him that the concerned persons are not genuine. During the course of enquiry no body turned up claiming that the concerned workmen were working in their place. Actually who were the genuine persons has not been stated either in the enquiry report or in the evidence of the witnesses for the management. The real grievance should have been of the so called genuine persons in whose places the concerned workmen were working. But those names are neither heard nor there. No body turned up before the Enquiry Officer claiming that they were genuine persons and the concerned workmen were working in their place as imposter.

11. I have looked to the certificates (Ext. M-2) series. The father's name of Shri Rameshwar B.P. has been shown as Sri Laxman B.P. The certificate has been given by the Mukhiya and the B.D.O. It has been stated on behalf of the management that these certificates are not genuine nor it was granted by the Mukhiyas of the Gram Panchayat. Prima-facie I find no reason to disbelieve these certificates. In case of Tipla Bhuia and Tiplan Bhuia the certificates have been issued by the Mukhiya and the B.D.O. Specially in case of Tipla Bhuia I find that the photograph have been identified by on Shri Surendra Kumar Singh, Advocate, Dhanbad. Ext. W-1 is the photo copy of the genuineness certificate granted by the Mukhiya in respect of Shri Rameshwar B.P. It is of the year 1986. There also the father's name of Shri Rameshwar B.P. has been shown as Laxman B.P. The certificates duty exhibited on behalf of the management appurtenant to the year 1980 which were filed when the concerned workmen were engaged as Miner/Loader. At this very stage I would also like to refer Ext. W-2 which is the photo copy of the certificate of Mines Vocational Training in Form B. This shows that Shri Rameshwar B.P. son of Laxman B.P. had been sent for training by the management where he was imparted training for the period from 19-9-80 to 10-10-80.

12. In this connection I may refer to the evidence of Shri Rameshwar B.P. WW-2. Shri Rameshwar B.P. stated that he had completed 75 days work in a year and so he was taken in the employment by the management in the year 1980. After employment he was put on training for 18 days. After appointment in the year 1980 he was given underground duty as Miner/Loader. But he was stopped in the year 1981 without any notice pay or the compensation. In cross-examination a suggestion has been thrown to this witness that the father of Rameshwar B.P. worked in Khas Kusunda Colliery from 1973 to 1976 was not Laxman B.P. It was also suggested that Rameshwar B.P. was a different man and his father's name was different. The suggestions have been denied by the concerned workman. I find no substance in such suggestion when the management itself has failed to state the real father's name of Rameshwar B.P.

13. WW-1 is Shri Kumar Arjun Singh who is the State Secretary of Colliery Karamchari Sangh. He had raised the industrial dispute. He also testified that a list was taken out by the management inviting objections. The management also fixed the photographs of these persons on the notice Board of the colliery. Generally objections were invited from the public. The concerned workmen were given employment after going through all the necessary formalities. WW-3 is one Shri Mahipal Das B.P. He is a close neighbour of the concerned workmen. He has been working in Khas Kusunda Colliery as Haulage Operator since 1968. He claims to know all the concerned workmen who were working in Khas Kusunda colliery. He had seen them working as wagon loader since 1971-72. He has explained the duty of the miner/loader. He stated that the miner/loader cuts coal inside the mines and the same is brought out the mine by haulage khalasi. In this way it can be said that these concerned workmen had direct link and connection of his work with the work of the concerned workmen and in the circumstances he was expected to know them better. Apart from that these concerned workmen are the neighbour of this witness. Ext. W-4 series are the wage sheets of Rameshwar B.P. showing that he had worked for certain days in certain months.

14. I have examined these aspect of the matter. The concerned workman were stopped from their duties on the basis of the enquiry report conducted by MW-1. I have discussed

the merit of the enquiry report in details and I have come to the conclusion that it was most perfunctory one which should not have been acted upon by the management. In the enquiry report no details was given out. In such view of the matter I am to hold the view that the concerned workmen have been wrongly stopped from their duty. It is also true that they were stopped in the year 1981 but the reference was made in the year 1987. There is nothing to show that these concerned workmen had been taking steps and representing their case before the management during these periods. This suggests that the concerned workmen were sleeping over the matter at least for 5 to 6 years and then the industrial dispute was raised. In the circumstances, I do not propose to give any back wages. But since they have been deprived of their livelihood I would order that they be reinstated in their original jobs. The management is thus directed to reinstate them as Miner/loader within 2 months from the date of the publication of the award.

This is my award.

B. RAM, Presiding Officer

नई दिल्ली, 9 फरवरी, 1994

का.आ. 660.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नेशनल सेरिकल्चर प्रोजेक्ट सेंट्रल सिल्क बोर्ड, देहरादून के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली, के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-2-94 को प्राप्त हुआ था।

[सं. एल-42012/122/93-आई.आर. (डी.यू.) (पार्ट)]  
के.वी.बी. उष्णी, ईक अधिकारी

New Delhi, the 9th February, 1994

S.O. 660.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of National Sericulture Project, Central Silk Board, Dehradun and their workmen, which was received by the Central Government on 8-2-1994.

[No. L-42012/122/93-IR (DU) (Pt.)]

K. V. B UNNY, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I. D. No. 78/93

In the matter of dispute :

BETWEEN

Shri Balbir Singh through  
Chairman, Silk Board Karamchari Sangh,  
Karyalaya Local Bus Stand,  
Dehradun-248001.

Versus

Deputy Director,  
National Agriculture Project,  
P-3, Mool Beej Farm,  
Silk Board No. 1,  
Mohit Nagar,  
Dehradun-248001.

## APPEARANCES :

None—for the workman.  
Shri R. P. Khanna—for the Management.

## AWARD

The Central Government in the Ministry of Labour vide its Order No. 42012/122/93-IR (DU) dated 30-9-93 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the Pitu-2, Mool Beej Farm, Central Silik Board in terminating the services of Balbir Singh S/o Shri Govind Ram Labour is legal and valid. If not to what relief the workman is entitled to ?"

2. Notice of the reference was sent to the workman but he did not appear. Registered notice was again sent for 18-1-94 on which date again the workman did not appear. It appears that the workman was not interested in pursuing this dispute. There is no statement of claim given on file and for that reason the management has not led any evidence. In this situation I am of the opinion that no dispute exist between the parties and no dispute award is given leaving the parties to bear their own costs.

Dated : 18th January, 1994.

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 10 फरवरी, 1994

का. ग्रा. 661.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सीनियर सुपरिन्टेंडेंट आफ पोस्ट आफिस, चंडीगढ़ के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चंडीगढ़ के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 9 फरवरी, 1994 को प्राप्त हुआ था।

[सं. एल-40012/53/88-डी-2(बी) (पार्ट)]

के०बी०बी० उन्नी, डेस्क अधिकारी

New Delhi, the 10th February, 1994

S.O. 661.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Sr. Supdt. of Post Office, Chandigarh and their workmen, which was received by the Central Government on 9-2-1994.

[No. L-40012/53/88-D.II (B) (Pt.)]

K. V. B. UNNY, Desk Officer

## ANNEXURE

BEFORE SHRI ARVIND KUMAR, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-  
CUM-LABOUR COURT, CHANDIGARH

Case No. I. D. 111/89

Madan Lal Sharma Vs. Post Office

For the workman—Shri Kapil Sharma.

For the management—Shri Kundra A.D.A.

## AWARD

Central Government vide Gazette Notification No. L-40012/53/88-D.II (B) dated 21st July, 1989 issued U/S 10(1)(d) of I. D. Act 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the Sr. Supdt. of Post Office, Chandigarh in terminating the services of Shri Madan Lal Sharma S/o Shri Dina Nath Vasudev

Clerk at their office w.e.f. 18-4-75 is legal and justified ? If not to what relief is the concerned workman entitled and from what date ?"

2. Case of the petitioner that he was appointed as clerk in the head office on 7-12-1963. He had performed various assignments and duties from time to time. Lastly he was working on telephone revenue counter in the head post Office, and garu. A false criminal case was got registered against him with the Police Station Section Sector 17 U/s 409 of I.P.C. by the then Senior Supdt. of Post, Chandigarh. His services were illegally terminated on 18-4-1975 on account of said criminal case. He further alleged that criminal case was tried which resulted in his acquittal. After expiry of limitation of filing the appeal he made representation to the senior Supdt. of Post Office to take him back in service but his representation was rejected on 11-8-1986. He preferred an appeal to the Post Master General which too rejected on 15-7-1987. No enquiry was held. Many juniors to him are still continuing. Upon his acquittal his claim is established that his services were illegally terminated by the respondent management on 18-4-1975 which is void, illegal and unjust. He has thus sought the reinstatement with all attendant benefits with back wages with interest @ 12% per annum.

3. The management in their written statement has taken the preliminary objection that the petitioner is not a workman under the Industrial Disputes Act, 1947. He was a regular postal employee covered under the Central Civil Service (CCA) Rules 1965, CCS (Temporary Service) Rules 1965, CCS (Conduct) Rules 1964, CCS (Leave Rules) 1972, CCS (Pension) Rules and thus Central Administrative Tribunal was Competent to entertain his case and this Court has no jurisdiction. On merits the plea of the management that he was appointed as postal assistant in Chandigarh Head Office and joined on 14-3-1964 after completing the prescribed training. His work and conduct was not satisfactory through out. He was not considered fit for grant of quasi-permanency certificate by the Senior Superintendent of Post Offices on two occasions i.e. 10-5-1972 and 10-12-1973 on account of his unsatisfactory record. He had undergone various punishments awarded from time to time for his misconduct/misbehaviour which are noted in his service book/confidential record. Because of these punishments he was not made permanent/quasi permanent to the clerical cadre. The management had given the detail of punishments which are numbering 18 from 29-12-1964 to 21-2-1975 which include the punishment of warnings, censure, withholding of increments. Further stand of the management that the services of the petitioner was terminated on 18-4-1975 under the provisions of Sub-rule (1) of Rule 5 of Central Civil Service Temporary rules 1965. For the case of misappropriation of Rs. 4415.25 a criminal case was got registered U/S 409 of IPC but however his services were terminated not on account of said case but owing to the general unsatisfactory record. The Court had given the benefit of doubt in the said criminal case. The petitioner failed to file an appeal against his termination within the time limit. His representation dated 24-6-1986 received after 11 years. The same was not accepted being time barred. His appeal was also rejected. The order of termination is legal and unjustified and sought the dismissal of this reference.

4. Replication was also filed, reasserting the same facts as contained in the claim statement.

5. The petitioner filed his affidavit Ex. W-1 in evidence. He also relied on the documents Ex. W-2 to W-7 the copies of termination order, his appeal, order rejecting his appeal. MW-1 J. L. Arora, Senior Superintendent, Post Office is the management's witness. He filed his affidavit Ex. M-1. He admitted in his cross-examination that no enquiry was held before termination of the service of the workman and his termination was purely on insufficiency in service. He also admitted that no show cause notice was served on the petitioner before terminating his services. He also admitted that persons junior to the petitioner whose record is clear are still serving. The management also placed on the record the orders passed in earlier punishments awarded to the petitioner which are numbering 18 from the year 1964 to 21-2-1975.

6. I have heard both the parties, gone through the evidence and record,

7. Counsel appearing on behalf of the management has argued that Postal Department is not an 'Industry' and further the petitioner was a regular postal assistant and his services were terminated under the provisions of sub-rule (1) of Rule 5 of the Central Services (Temporary) rules 1965 and this Court has got no jurisdiction to entertain his claim and has referred the case Director of Postal Service Vs. Kaimal, 1984 Lab. I.C. page 628. After perusing all the aspects there is no merit in the contention raised by the counsel for the management and the judgement cited is not applicable in the circumstances of the present case. The fundamental question whether the Postal Department is an industry or not within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. The said section defines industry as follows :

“ ‘Industry’ means any business, trade, undertaking manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen”.

The definition is very wide and covers a large area. In considering whether Post and Telegraph Department is an 'Industry' or not it will be pertinent to refer to the definition of "public utility service" as contained in Section 2(n) of the Act. Sub-clause (iii) of Section 2(n) includes "any postal, telegraph or telephone service" to be a public utility service. The Postal Department is also a Public Utility Service as Telephone Department. The Public Utility Service such as Telephone Department etc. are held to be 'industry' in the case of D. N. Banerjee Vs. P. R. Mookerjee reported in AIR 1953 Supreme Court 59 and largely considered in Bangalore Water Supply Vs. A. Rajappa AIR 1978 S.C. page 548. The issue of postal dept. was also considered in Chander Parkash Vs. Union of India and other reported in 1994 (1) All India Service Law Journal page 9- (C.A.T. Jodhpur). It has been held that very definition of Public Utility service in Section 2(n)(iii) that the Postal Service is public utility service under the Industrial Disputes Act, goes to show that the postal services are ordinary service which falls within the purview of Industrial service and employees can get the benefits of workman as defined under Section 2(s) of the Industrial Disputes Act 1947. Therefore, no dispute is left that the Postal Department which is also a 'Public Utility Service' squarely falls within the definition of 'industry' under the Industrial Disputes Act, 1947. The ratio of the view taken in Tapan Kumar Jana Vs. General Manager, Calcutta Telephones and others reported in 1981 (1) Service Law Reporters page 292 is also follows. Kaimal's case (Supra) cited by the management is no help to the management. In the said case the issue was only in relation of conflict on account of special rules enacted under article 309 and Chapter V-A of the Industrial Disputes Act, 1947 and it was held that Chapter V A of the Industrial Disputes Act can be pressed into service only in those cases where these special rules relating to temporary government servants does not apply. It does not say that the P&T Department is not an industry and employees are not a workman. Counsel for the management only sought an assistance to the admission made by the petitioner in his cross-examination that the CCA (Leave) rules are applicable to him. This does not mean that his services are governed under the provisions of sub-rule 1 of rule 5 of Central Civil Service (temporary) rules, 1965. The persons once employed in the postal Department, CCA (Leave) rules obviously will be applicable to all of them what ever may be the mode of recruitment. In absence of the management showing the services of the petitioner having governed under the Central Civil Service (Temporary) rules, 1965 they can not take the benefit of the said judgement. Since postal Department has been held to be an Industry the petitioner who was posted as postal assistant is certainly 'workman' as defined U/S 2(s) of the Industrial Disputes Act, 1947 and thus there was a relationship of master and servant between the petitioner and the respondent management.

8. Admittedly a case U/S 409 of I.P.C. was registered against the petitioner on 6-6-1975 for mis-appropriation of funds amounting Rs. 4417.25 some where in 1974, and the services of the petitioner were terminated on 18-4-1975. The petitioner faced the criminal trial which resulted in acquittal on 4-1-1985. The stand of the management that the services of the petitioner were terminated not on account of the criminal case but on account of unsatisfactory record

has admitted that no enquiry was held prior to the termination of service of the petitioner. Even no show cause notice was served on the petitioner before terminating his services. The present case is thus a case of 'no enquiry'. The petitioner had put in service for nearly 12 years. The management at all never wanted the services of the petitioner on account of inefficiency it was incumbent upon the management to hold a regular domestic enquiry before dispensing with the services of the petitioner, in order to have the benefits of the exclusion clauses of retrenchment as defined in Section 2(oo) of the Industrial Disputes Act, 1947 i.e. "punishment inflicted by way of disciplinary action". The domestic enquiry in the Industrial law has acquired a great significance and industrial adjudication attaches considerable importance to such enquiry. It is settled law that an enquiry is not a empty formality but it is essential condition to the legality of the disciplinary order. In other words, before the delinquent workman can be dismissed for misconduct the employer should hold a fair and regular into the misconduct failing which the termination would be an illegality and perse void. Termination is a major penalty, certainly then a regular enquiry has got to be conducted in absence of which the termination is certainly illegal. The management has also not sought any opportunity to justify their action during the course of present proceedings.

9. Admittedly the petitioner was not paid any retrenchment compensation by the management. The said act of the management is violative of the Industrial Disputes Act and particularly of the provision of Section 25-F of the said Act. It is not disputed that the petitioner had been continuing in service for about 12 years till his services were terminated on 18-4-1975, i.e. he had worked for more than 240 days in a year. The respondent having terminated his services, said termination is amount to retrenchment without complying with the provisions of Section 25-F of the Act, it must be held that termination of services of the petitioner is illegal. He is, therefore, entitled to re-instatement with all consequential benefits.

10. The question now under consideration is the payment of backwages. Services of the petitioner stood terminated vide order dated 18-4-1975 (Ex. W-2). However the present reference has been raised in the year 1989. The petitioner had remained silent for nearly 14 years. The appropriate government could decline to refer the dispute to the Labour Court on the point of delay. But however since the same has been referred, for the period of delay in making the reference by the petitioner. He can be denied backwages as held in Punjab Agro Industries Corporation Ltd. Vs. Presiding Officer, Labour Court, U.T. Chandigarh reported in 1993 (2) S.C.T. page 169. Following the ratio laid down in Punjab Agro Industries (Supra) backwages are denied to the petitioner till the date of reference i.e. 21-7-1989. However for the subsequent period onward from 21-7-1988 till his reinstatement, the petitioner is entitled to the backwages.

11. The reference is answered accordingly. The Ministry be informed.

Chandigarh.

Dated 18-1-1994

ARVIND KUMAR, Presiding Officer

नई दिल्ली, 10 फरवरी, 1994

का. आ 662.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचन में केन्द्रीय सरकार डी. ई. टी. कर्नाल के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चंडीगढ़ के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 9-2-94 को प्राप्त हुआ था।

[सं० एल-40012/64/90-आई. मार. (डी यू) (पार्ट)]  
के. बी. बी. उष्णी, डैस्क अधिकारी

New Delhi, the 10th February, 1994.

S.O. 662.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of D.E.T. Karnal and their workmen, which was received by the Central Government on 9-2-94.

[No. L-40012/64/90-IR(DU)(Pt.)]  
K. V. B. UNNY, Desk Officer

#### ANNEXURE

BEFORE SHRI ARVIND KUMAR, PRESIDING OFFICER,  
CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-  
LABOUR COURT, CHANDIGARH

Case No. I.D. 14/91

Anil Sharma Vs. Divisional Engineer Telecom.  
For the workman—Shri B. R. Prabhakar.  
For the management—Shri Arun Walia.

#### AWARD

Central Govt. vide gazette notification no. L-40012/64/90-IR (D.U.) dated 30-1-91 issued U/S 10(1)(d) of I.D. Act 1947 referred the following dispute to this Tribunal for adjudication:—

“Whether the action of the management of D.E.T. Karnal in terminating the services of Sh. Anil Sharma, Driver w.e.f. 10-1-89 is justified? If not, to what relief the concerned workman is entitled to?”

2. Case of the petitioner as set out in the statement of claim that he was appointed as matador driver w.e.f. 13-3-1988 on the salary of Rs. 1170 per month. He had worked continuously up to 10-1-1989 when his services were terminated verbally without following the provisions of Section 25-F of Industrial Disputes Act 1947. He was not served with any notice. He raised a demand notice and during the conciliation proceedings, the management declined to take him on duty. His termination is in violation of the provisions of Section 25-F of the Industrial Disputes Act 1947 and sought reinstatement with full back wages.

3. The stand of the management in the written statement that the petitioner was engaged as driver purely on temporary and casual basis as his name was sponsored by the employment exchange. He had worked from 14-3-1988 to 9-1-1989. He remained absent from 10-1-1989 to 12-1-1989 and never turned up for performing his duties. Further stand of the management that the conduct of the petitioner was not up to the Mark. There was lot of complaints against him. He was a rash driver. He had apologised for his conduct on many occasions. He was given warnings and written as well. The petitioner himself made entries from 15-12-1989 to 2-1-1990 which is against rules. He left the job on his own accord and his services were never terminated as he did not come back to perform his duties. The management thus sought the dismissal of this reference.

4. Replication was also filed reasserting the same facts as contained in the claim statement.

5. The petitioner filed his affidavit Ex. W1 in evidence. MW1 V. P. Pruthi Senior Asstt. is the management's witness. He filed his affidavit Ex. M1. He also relied on the documents Ex. M2 or M5. The workman got proved Ex. W3 the memo issued by the management and W4 to W7 the representations made by the petitioner. The respective parties closed their evidence.

6. I have heard both the parties, gone through the evidence and record.

7. From the facts and evidence it is clear that the petitioner had been serving as driver with the respondent management from 14-3-1988 to 10-1-1989. The management has placed on the record the documents Ex. M2 to M5, Ex. M2 dated 2-1-1989, Ex. M3 and M5 dated 17-12-1988 and 13-10-88 are the complaints made by the officials to D.E.T.

Panipat in relation to rash and negligent driving of the petitioner and sought that his conduct is not satisfactory and also recommended for his removal. Ex. M4 is the explanation of the petitioner. Similarly Ex. W3 is the memo dated 6-1-1989 issued to the petitioner for having made the entries from 15-12-1988 to 2-1-1989. Ex. W4 to W7 are the representations of the petitioner apologising the same and under neath the representations of the petitioner Ex. W-4 dated 6-1-1989, W5 dated 13-10-1988 the forwarding officer had recommended his removal immediately. The petitioner has stated to have remained absent from 10-1-1989 to 12-1-1989. The management has thus taken the plea of abandonment. Controversy thus between the parties is whether the petitioner voluntarily abandoned himself from the work as alleged by the respondent management or he was refused work due to his rash and negligent driving or misconduct when his removal was recommended by the office. In order to constitute abandonment there must be total or complete giving up of duties so as to indicate an intention not to resume the same. The said intention may be determined from the act and conduct of the parties, the length of absence and in the light of surrounding circumstances of each case. As discussed above the management was not happy with the petitioner on account of his rash and negligent driving and obviously would be interested to get rid of him on some pretext. The petitioner had no doubt had remained absent from 10-1-1989 to 12-1-1989 i.e. only for three days. This period of absence is too less to constitute abandonment. The respondent management has also not placed any contemporaneous material to show that the petitioner was treated as absent from duty and was dealt with as such. No material has also been placed by the management to show that any attempt was made by them to inform the petitioner that he should resume duty by the specific date failing which action would be taken to terminate his services. Ex. W5 dated 13-1-1989 is the letter written by the petitioner to the management excusing his absence. Had there been any intention of the petitioner to abandon the job he would have not approached the management just after two days for excusing his absence. The fact of the said representation Ex. W5 has also not denied by the management. The management at that very stage could allow him to join the duty treating the said three days as leave of the kind due but nothing of this sort was done at the instance of the management. His promptness in raising the demand notice had itself in the year 1989 also negatives the plea of abandonment taken by the management. In such circumstances the plea of the management that the petitioner had abandoned the job can not be accepted.

8. Examined from another angle also the petitioner had completed 240 days of continuous service during the period 14-3-1988 to 9-1-1989 as defined U/S 25-B of the Industrial Disputes Act 1947 and therefore, he qualifies himself under the protection of Section 25-F of the Industrial Disputes Act 1947. It was mandatory for the management to have served a notice or to have given the pay in lieu of notice and retrenchment compensation before terminating his services to the petitioner. However the management had not done so, thus violated the provisions of Section 25-F of the Industrial Disputes Act 1947.

9. In view of the discussion made in the earlier paras, the termination of the services of the petitioner is certainly illegal. He is thus ordered to be reinstated in service with all consequential benefits.

10. Coming to the issue of payment of backwages, there is no pleading nor any proof that the petitioner was not gainfully employed in all these years. Even in his affidavit he is silent to the effect that he was not gainfully employed. In this situation as held in Randhir Singh Vs. State of Punjab and others reported in 1993 (3) Recent Service Judgement page 212 he should be denied the back wages. But however in the cross-examination he had deposed that he remained unemployed after his termination. He also states that he is married and having one child and his father is supporting his family. It can not be expected that in all these years he was totally dependant on his father and not earning anything despite having wife & child. Taking over all view of the situation it is ordered that the petitioner be paid 50 per cent of the backwages.



11. In a way reference is answered and returned to the Ministry.

Chandigarh.

ARVIND KUMAR, Presiding Officer

नई दिल्ली, 14 फरवरी, 1994

का. मा. 663.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बंगलोर टेलीफोन्स (टेलीकाम डिपार्टमेंट) के प्रबंध-तंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलोर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-2-1994 को प्राप्त हुआ था।

[सं. एल-40012/37/88-डी-2(बी) (पार्ट)]  
के. बी. बी. उण्णी, डेस्क अधिकारी

New Delhi, the 14th February, 1994

S.O. 663.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bangalore Telephones (Telecom Deptt.) and their workmen, which was received by the Central Government on 11-2-1994.

[No. L-40012/37/88-D. II(B)(Pt.)]

K. V. B. UNNY, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated this 3rd day of January, 1994

PRESENT :

Sri M. B. Vishwanath, B. Sc., B.L.,  
Presiding Officer.  
Central Ref No 15/96

I party	v/s.	II party.
Shri Shivashankar, s/o Muthrayappa, Dr. No. 64 7th Cross, Chikkatayappa Road, Vasanthanagar, Bangalore-560 052.		The General Manager, Bangalore Telephones, K. G. Circle, Bangalore-560051.
I party	v/s.	II party.
(By Sri V. Gopala Gouda, Advocate).		By Sri. V. P. Kulkarni, Central Govt. Pleader

#### AWARD

In this reference made by the Hon'ble Central Govt. by its order No. L-40012/37/88-D.II(b) Dt. 19-7-89 under Sec. 10(2A)(i)(d) of I.D. Act the point for adjudication as per schedule to reference is :—

"Whether the management of Bangalore Telephones (Telecommunication Deptt.) is justified in terminating the services of Sri Shivashankar, w.e.f. 31-7-87. If not to what relief the workman is entitled to?"

2 In the claim statement it is contended :—

The I party workman was appointed by the II party as a casual mazdoor w.e.f. 1-8-85. He has rendered blemishless service to the II party. He has worked continuously for more than 240 days. The I party was orally denied work and was removed from the job. The termination of the services of the I

party is illegal. The I party is entitled to be reinstated with full back wages and seniority.

3. In the counter statement (statement of objections) it is contended :—

The I party was appointed on daily rate basis w.e.f. 1-8-85, in the cable construction unit. Later on he was engaged to work in the Installation of E.L.B. exchange at Malleshwarana, Bangalore from 1-9-86. As the work in the ELOB installation was completed, he was not further employed as a casual mazdoor from 31-8-87. The I party has not worked as a daily mazdoor continuously for 240 days in a calendar year and hence he is not a workman. The I party is not a workman as defined under Sec. 2(s) of the I.D. Act. So this Tribunal has no jurisdiction to adjudicate the matter. The I party was only a daily rated labourer. His services were dispensed with as the work for which he had been taken was completed. The action of the I party is legal and the I party is not entitled to reinstatement.

4. In the order sheet dt. 18-6-91 it is stated by the Tribunal that separate issues were not required since the point for determination was covered by the schedule to reference. It has also been made clear in the order sheet that points like maintainability would be considered at the time of final arguments.

5. On behalf of the II party M.W.-1 Kaman Dvl. Engineer has been examined. On behalf of I party he has got himself examined and closed his case.

6. It is stated in the counter statement that I party is not a workman. What is contended in the counter statement is that I party was a daily rated worker. It has been laid down by the Delhi High Court in 1987 (1) L.L.J. 85 (Workmen of Municipal Corporation of Delhi and another v/s. Management of Municipal Corporation of Delhi and another) that even in the case of a daily rated worker procedure contemplated under Sec. 25-F for retrenchment has to be followed. This authority clearly means that even a daily casual labourer or daily rated worker is a workman within the definition of Sec. 2(s) of the I.D. Act. There is no substance in the allegation that the II party is not an Industry.

7. The I party workman has stated in his evidence that he worked under II party for 2 years continuously without break. The I party has produced Ex. W.2 which is the personal record issued to him by the II party. The entries in the personal record Ex. W.2 clearly show that the I party has worked continuously for more than 240 days in a year. In fact the Dvl. Engineer M.W.1 has clearly admitted in para 7 of his cross-examination that the I party has worked from 1985 Aug. upto 31-8-87. Thus it is abundantly clear that the I party has worked continuously for more than 240 days in a year.

8. The Dvl. Engineer M.W.1 has stated that the I party's services were terminated as per the instructions of G. M's office contained in Ex. M.3. The instructions contained in Ex. M.3 cannot override the mandatory provisions of the I.D. Act.

9. The Dvl. Engineer M.W.1 has stated that Ex. M.2 is the termination order. In the same breath M.W.1 has admitted that the copy of Ex. M.2 was not served on I party and his signature Ex. M. 2(a) was obtained subsequently. In view of the fact that the signature of I party has been obtained to the so called termination order Ex. M.2. Ex. M.2 has to be ignored.

10. There is yet another lacuna in the termination order Ex. M.2 which purports to give one months notice to I party workman. Ex. M.2 is dated 3-8-87 and the II party has stated in Ex. M.2 that the services of I party has been cancelled w.e.f. 31-8-87. So 30 days notice is not given to I party

11. I have already adverted to the authority of the Delhi High Court. The Delhi High Court has been pleased to lay

down that the conditions precedent to retrenchment of a daily rated workman have to be complied with. In the instant case, suffice it to say that none of the conditions is complied with.

12. For the aforesaid reasons the order terminating services of the I party workman has to be set aside. It is set aside accordingly.

13. The Learned counsel for the II party has vehemently contended that in any case this Tribunal should not grant backwages. Against this it is contended by the Learned counsel for the I party workman that the I party is entitled to full backwages. The Learned counsel for the I party relied on 1981 (3) S.C.C. 225 (Mohan Lal vs. Management of M/s. Bharat Electronics Ltd.) wherein the Supreme Court has been pleased to lay down that in the case of illegal termination of services, worker is deemed to be continuing in service and is entitled to reinstatement with full backwages. The Learned counsel for the II party has submitted that in some references involving the II party department, this Tribunal has not awarded backwages. Those cases perhaps involved misconduct on the part of workmen. The Supreme Court has been pleased to hold in the above mentioned authority that if the order of termination is void ab initio reinstatement should be ordered with full back wages. In the Supreme Court authority the services of the workman was employed as a salesman. The order described appointment as temporary in the first instance and he was likely to be made permanent. But the services of the workman were abruptly terminated. The present reference is, in my humbly opinion distinguishable on facts from the authority of the Supreme Court. In the instant case the I party was only appointed as a daily rated worker till the completion of the project and his services were terminated after completion of the project on the instructions of the General Manager as per Ex. M-3 though the termination cannot be upheld. For these reasons I am of opinion that if 50 per cent back wages are awarded ends of justice will be met.

#### ORDER

The order terminating the services of the I party workman is set aside. The II party is directed to reinstate the I party workman forthwith with 50 per cent of back wages and continuity of service. Reference accepted as stated above. Submit to Government.

(Dictated to Stenographer, typed by him, corrected signed by me on this 31st day of January 1994).

M. B. VISHWANATH, Presiding Officer.

नई दिल्ली, 10 फरवरी, 1994

का. ग्रा. 665.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार क्षेत्रीय ग्रामीण बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चण्डीगढ़ के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 9-2-94 को प्राप्त हुआ था।

[संख्या एल-12012/63/90-आई.आर. (बी-III)/  
आई.आर. बी.-I]

एस. एस. के. राव, डैस्क अधिकारी

New Delhi, the 10th February, 1994

S.O. 664.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to 521 GE/94—20

the management of Kshetriya Gramin Bank and their workmen, which was received by the Central Government on the 9th February, 1994.

[No. L-12012/63/90-IR. (B.II)/IR.B.I.]  
S. S. K. RAO, Desk Officer.

#### ANNEXURE

BEFORE SHRI ARVIND KUMAR, PRESIDING OFFICER,  
CENTRAL GOVERNMENT, INDUSTRIAL TRIBUNAL-  
CUM-LABOUR COURT, CHANDIGARH

Case No. I.D. 77/90

Smt. Jijan Vs. Kshetriya Gramin Bank  
For the workman: Shri P. S. Premi  
For the management: Shri R. S. Dhaliwal  
AWARD

Central Govt. vide gazette notification No. L-12012/63/90-IR(B-3) dated 21st June 1990 issued U/s 10(1)(d) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Kapurthala Ferozepur Kshetriya Gramin Bank in terminating the services of Smt. Jijan w.e.f. 1-3-1986 employed as sweepress on payment of Rs. 30/- PM is justified? If not, to what relief the workman is entitled to?"

2. Case of the petitioner is that she was appointed as sweepress at Bajaj Branch of the respondent Bank. She had worked for 14 years. Her services were terminated on 1-3-1986 without any notice, charge sheet and without giving any retrenchment compensation. She further alleged that some other sweeper was appointed on that very day of termination. Action of the management is illegal and unjustified. The post of sweeper at Bajaj branch is regular post. Her services were terminated with mala fide intentions. She was paid less wages. She has thus sought the reinstatement with full back wages.

3. The management in their written statement has taken the preliminary objection that the petitioner was working on a part time basis for 15-20 minutes everyday. She was not in exclusive employment of the respondent management. Her claim can not be adjudicated under the provisions of Industrial Disputes Act, 1947 and reference is not competent. On merits the plea of the management that she worked for 1-1/2 years on purely part time casual basis. She herself voluntarily abandoned duty on her own accord by absents for 7/8 days. In view of this another sweeper was taken on duty. It was denied that there was a regular post of sweeper. Further plea of the management that the petitioner herself had agreed to work on the salary on which she was working and sought the dismissal of this reference.

4. Replication was also filed reasserting the claim made in the statement of claim.

5. The petitioner filed her affidavit Ex. W1 in evidence. She admitted in cross-examination that she had worked about 1-1/2 years on the payment of Rs. 30/- per month. The management produced MW1 Joginder Singh Gunman. He filed his affidavit Ex. M1. MW2 Sadiq sweeper. He filed his affidavit Ex. M2 where he states that he is working as sweeper since April 1986 at Bajaj Branch. MW3 Sat Pal Singh Barwa the manager. He filed his affidavit Ex-M3. The respective parties closed their evidence.

6. I have heard both the parties, gone through the evidence and record.

7. Counsel for the management resist mainly on the ground that the petitioner was only a part time employee and therefore, she can not be taken to be a workman under the Industrial Disputes Act, 1947 and reference is not competent. However contention of the counsel for the petitioner is that even a part time employee is a 'workman' as defined in the Act and as such the provisions of the Act is squarely applicable to her and she is entitled to protection thereunder. After perusing both the aspects the contention raised by the management is meritless. It is true that the petitioner was only a part time employee as she herself admitted that she was paid Rs. 30/- per month and that she used to clean two rooms. However clinching question before this Court is whether part time worker is a 'workman' as defined under

the Act. The definition of 'workman' is given in Section 2(s) of the Industrial Disputes Act. A plain reading of the definition makes it abundantly clear that in order to render a person 'workman' what is required is that he should be employed in any industry to do any manual, skilled or unskilled etc. work for hire. The definition as given in the Act does not make any distinction between a full-time employee and a part time employee. It does not lay down that only a person employed for full time will be taken to be a workman and that one who is only a part time employee should not be taken to be a workman. What is required is that the person should be employed for hire to discharge the work manual, skilled or unskilled etc. in an industry. If this test is fulfilled, a part time employee will also be a workman as is a full time employee. The matter was also considered in *State of Assam Vs. K. C. Dutta* reported in 1968 (1) L.L.J. page 288 wherein it was observed that even a part time employee was a civil servant for the purpose of Article 311(2) of the Constitution and it was held that a part time employee can be taken to be a civil servant, a part time employee in an industry should then also be taken to be a workman under the Act. Similarly in case *P. N. Gulati Vs. Labour Court* reported in 1978 (2) L.L.J. page 46, a doctor was employed in industry for rendering medical aid to its employee on a part-time. The question arose whether she should be taken to be a workman or not. It was held by the division bench that though the doctor was employed on part time, he was still a workman as defined in the Act. Similar view was taken in *Govindhai Kanabhai Maru Vs. N. K. Desai* 1988 Lab. I. C. 505. The question arose whether a part time servant doing the work of a sweeper should or should not be taken to be a workman under the Act. It was held as under:

"This Court is in respectful agreement with the said judgement of the Division Bench. The definition of workman in the Act is couched in sufficiently wide terms so as to include even the part time employees who have been in service over a long period. Therefore, it is held that the present petitioner falls within the definition and he should be treated as workman under the Act".

Therefore, no dispute is left with the definition of workman as given in Section 2(s) of the Act is comprehensive and wide enough to include even a part time employee. Thus the petitioner even a part time employee is governed by the definition of workman as given in Section 2(s) of the Industrial Disputes Act, 1947 and the present reference is competent.

8. The management has taken the plea of abandonment. In order to constitute abandonment there must be total or complete giving up of duties so as to indicate an intention not to resume the same. The intention may be determined from the act and conduct of the parties, length of absence and in the light of surrounding circumstances of each case. The management in their own showing in the written statement, she remained absent for about 7/8 days. This period of absence is too less to constitute abandonment. The management has not placed any contemporaneous material to show that the petitioner was treated as absent from duty and was dealt with as such. No material has also been placed by the management to show that any attempt was made by them to inform the petitioner that she should resume duty by the specific date failing which the action would be taken to terminate her services. The management at that very stage can allow her to join the duty treating the said period of 7/8 days as leave of the kind due but nothing of this sort was done at the instance of the management. In such circumstances the plea of the management that the petitioner had abandoned the job can not be accepted.

9. Examined from another angle also the management in their own admission as stated in the written statement that the petitioner had worked for about 1-1/2 years. Thus it is implied that she had completed 240 days of continuous service prior to the date of termination as defined in Section 25-B of the Industrial Disputes Act 1947. Therefore, she qualify herself under the protection of Section 25-F of the Industrial Disputes Act 1947. It was mandatory for the management to have served a notice or to have given the pay in lieu of notice and retrenchment compensation before terminating her services to the petitioner. However the management as evident from the cross-examination of MW2 Sat Pal admit-

tedly had not done so, thus violated the provisions of Section 25-F of the Industrial Disputes Act, 1947.

10. In view of the discussion made in the earlier paras, the termination of the services of the petitioner is certainly illegal. She is thus ordered to be re-instated in service with all consequential benefits.

11. She has also alleged that she was paid less wages in comparison to regular sweeper. This plea can not be accepted for the reason that the present reference is only in relation to the termination and not in relation to the fixation of wages. Therefore, the issue of wages is not the matter of reference to this Tribunal for adjudication and the Tribunal cannot travel beyond the points in the order of reference. The ratio laid down in *Firestone Tyre and Rubber Co. of India Pvt. Ltd. Vs. Their workman* 1981 (2) L.L.J. 218 is followed.

12. Coming to the issue of payment of backwages, despite her termination in the year 1986 she raised the demand notice in the year 1988. She is thus allowed backwages only with effect from the date of raising the demand notice till reinstatement.

13. In a way reference is answered and returned to the Ministry.

Chandigarh.  
27-1-1994.

ARVIND KUMAR, Presiding Officer.

नई दिल्ली, 10 फरवरी, 1994

का. भा. 565. — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चण्डीगढ़ के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-2-94 को प्राप्त हुआ था।

[संख्या एल-12012/311/86-डी-II(ए)/आई.आर.-बी-1]

एस. एस. के. राव, डेस्क अधिकारी

New Delhi, the 10th February, 1994

S.O. 665.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on the 9-2-1994.

[L-12012/311/86. D.II(A)/IR. B.I]  
S.S.K. RAO, Desk Officer.

#### ANNEXURE

BEFORE SHRI ARVIND KUMAR, PRESIDING OFFICER, CENTRAL GOVT., INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

Case No. I.D. 30/87

P. D. Pathak Vs. State Bank of India.  
For the workman: Shri M. I. Basoor.  
For the management: Shri T. S. Doabia.

#### AWARD

Central Govt. vide gazette notification No. L-12012/311/86-D.II(A)/IR.B.I dated 16th May 1987 issued U/S 10(1)(d) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of State Bank of India in imposing the punishment of dismissal to

Shri P. D. Pathak, Teller, State Bank of India, Taran Taran Branch is legal justified? If not, to what relief is the concerned workman entitled?"

2. Brief facts of the case is that the petitioner was placed under suspension on 24-9-1979 on account of the fraud committed by the petitioner in relation to the fact that on 11-7-1979 while working as teller, he filled the withdrawal form in relation to the account No. 2703 belonging to one Ashwani Kumar, forged his signatures and thereafter obtained the payment thereof after paying the same under the authority of teller. The withdrawal in question was subsequently posted by him in the relative saving bank account, although he was not working on S.B. seat on that day. He thus misappropriated the sum of Rs. 2000/- from the said account. Similarly he repeated the same act on the following day on 12-7-1979 for having withdrawn Rs. 2500/- from saving bank account No. 2309 belonging to one Smt. Savitri Juneja. He was charge sheeted on 19-2-1980. The disciplinary enquiry had started on 18-6-1980. Enquiry officer submitted his report on 3-4-1981. He was given personal hearing by the disciplinary authority on 25-8-1981. He was removed from service on 27-8-1981. The petitioner has questioned the departmental enquiry on the ground that the appointment of the enquiry officer was not in accordance with 19:14 of the Bipartite Settlement. He was not given the documents or got perused before the filling of the reply to the charge sheet. The enquiry was sham. He was not given reasonable opportunity by the enquiry officer, disciplinary authority and the appellate authority. The enquiry officer placed the reliance on the documents which were not duly proved. Witnesses were dropped from the list of witnesses by the enquiry officer without giving any reasons. Enquiry Officer was acting as an agent of the bank and had allowed to place fresh documents without passing any speaking order. He also relied the hearsay evidence. He had placed his reliance on the confession dated 20-8-1979 wrongly. Account holders namely Ashwani Kumar and Smt. Savitri Juneja were not produced during the course of enquiry. There was no complaint from them. The enquiry officer had wrongly relied the disclosures of the mother of Avinash Kumar and some writing of the husband of Smt. Savitri Juneja. The enquiry officer had ignored vital points before coming to the findings. His confession dated 20-8-1979 was under threat. The conclusions is perverse and opposed to the principle of natural justice and fair play and equity and thus sought the reinstatement with full back wages and continuity of service and other attendant benefits.

3. The management in their written statement has taken the stand that the petitioner had admitted his guilt in his letter dated 20-8-1979 wherein he had stated that he involved in both case regarding Rs. 2500/- from the A/C 2309 of Savitri Juneja and Rs. 2000/- from the account No. 2703 of Avinash Kumar. The money is already paid to the parties and he regrets the incident. Further stand of the management is that the petitioner was given two months time to file the reply to the charge sheet and ultimately final notice was given for the same on 26-3-1980. The documents were duly given and got perused from the petitioner. If at all he wanted to have some more documents or wanted to inspect he could request in that regard but nothing of this sort was done. The petitioner has not shown any thing to the fact that the enquiry officer acted in a biased manner, or he was partial. The management has taken further plea that he was being put certain questions when he was being examined on 29-12-1980. It was during this question being put to him it become necessary to refer certain receipts and it was in this connection the documents in question were permitted to be placed on the record by the enquiry officer. It is settled law that additional evidence can always be permitted to be placed on the record in the interest of justice. The petitioner was afforded full opportunity to cross-examine all the witnesses but there was failure on his part. Rather he dis-associated with the enquiry. The non production of Rangila Ram witness does not cause any prejudice to the petitioner. Commission of fraudulent acts stands proved from the documentary evidence and the admission made by the petitioner Enquiry has been conducted in a fair manner. The plea of the petitioner that his confession was got written under the influence of liquor, the said stand is missing in his appeal made to the appellate authority where he only states that this letter dated 20-8-1979 (confession) does not amount to confession. Other allegations were denied and sought the dismissal of this reference.

4. Replication was also filed reasserting the same facts as contained in the claim statement.

5. The petitioner produced himself as WW1 and filed his affidavit Ex. W1 in evidence. In his cross-examination he admits the factum of filling of the withdrawal slips of the saving bank account No. 2703 of Avinash Kumar for a sum of Rs. 2000/- and saving bank account No. 2309 of Mrs. Savitri Juneja for Rs. 2500/-. He also admits the fact for having the withdrawal duly entered in the ledgers although he was not working on the seat meant for making entries in the ledger of saving bank account. He also admits the letter dated 20-8-1979 having written with his hands. MW1 Narinder Singh manager is the management's witness. He filed his affidavit Ex. M1 in evidence. He also filed the enquiry proceedings Ex. M2. The respective parties closed their evidence.

6. I have heard both the parties, gone through the evidence and record.

7. Counsel for the petitioner has led main stress in the arguments that the petitioner was not afforded reasonable opportunity to represent his case. The management had not given relevant documents on which reliance has been placed. He has also pointed out that the enquiry officer was biased. The petitioner was not allowed to produce his evidence. The confession of the petitioner has been got recorded under threat. After perusing all the aspects the contentions raised by the counsel for the petitioner are meritless. It is settled principle of law that enquiry can not be said to have properly held unless employee proceeded against has been informed clearly of the charges levelled against him, (ii) the witnesses are examined in the presence of the employee in respect of the charges, (iii) employee is given fair opportunity to cross-examine the witnesses, (iv) he is also given fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter and (v) enquiry officer records his findings which reasons for the same in his report.

Ex. M2 is the enquiry proceedings placed on the record by the management. Undoubtedly the management of a concern has powers to direct its own internal administration and discipline but the powers are not unlimited and when dispute arises, the Tribunal has given the powers to see whether the termination of services of workman is justified and to give proper relief. In case of dismissal or misconduct the Tribunal does not ever act as a Court of appeal and substitutes its own judgement for that of management. The Court will interfere only (i) when there is want of good faith, (ii) when there is victimisation or unfair labour practice, (iii) when the management has been guilty of basic error or violation of principles of natural justice, (iv) when the material findings are completely baseless or perverse. In the instant case from the enquiry proceedings Ex. M2 it is quite apparent that on each and every hearing the petitioner alongwith his representative was present and participated through out till 9-12-1980 when the petitioner had walked out under protest when he objected to the filling of the bank's representative two enclosures referred in the employee's letter dated 20-8-1979. His walkout has not caused any prejudice to the petitioner as the same was done at the fag end of the enquiry. Counsel has pointed out that the management has not submitted documents relied at the start of the enquiry sands negated when the petitioner in his own showing stated in the statement of claim "that on the same date of the proceedings representative of the bank submit the documents relied upon by the bank to prove the charge and also the list of witnesses". The petitioner has also not pointed out that in what way he was not afforded full opportunity to defend his case. His claim is that the enquiry officer had ignored vital points but he has not pointed out what vital points has been ignored by the enquiry officer.

8. Another feature in this case is admission of the petitioner himself admitting his guilt. Counsel for the petitioner has pointed out that the said confession has got recorded under threat and the same does not amount to confession and it is only a regret. This plea is again not acceptable. His confession dated 20-8-1979 is Ex. M2 (in enquiry). The petitioner admits in his cross-examination this confession dated 20-8-1979 is in his handwriting. The same is reproduced as under:

"I am involved in the cases regarding Rs. 2500 of A/C 2309 of Savitri Juneja and Rs. 2000/- of A/C

2703 of Avinash Kumar. The money is already paid to the parties. The receipts in respect of the money paid to the parties are enclosed.

I regret the incident and request the head office to take lenient view and pardon me.

As regard the withdrawal of Arjan Dass of Rs. 15000/-, I myself is not involved in this case."

Yours faithfully  
Sdj- 20-8-1979"

After perusing the same it is not only a regret but admission in clear term showing his involvement. He also admits having paid the money to the parties and the receipt in respect of money paid to the parties is enclosed and sought the lenient view pardoning him. The plea of the petitioner that it was obtained under threat is again merit less for reason that the petitioner being the senior most must be fully aware of the implications and can not be expected that he would confess at the instance of the others when implications and consequences are apparent. Further the petitioner himself has given contradictory stand in relation to the contention. During the course of enquiry proceedings his stand was that the same was obtained under the influence of liquor. However he changed his stand in the present proceedings to the effect that the same has been obtained from him under threat and under compelling circumstances. If at all the petitioner had not involved himself in the said affairs there was certainly no threatening or compelling circumstances and reasons for him to give said confession. Another feature which corroborates his confession is his own admission in cross-examination that the factum of withdrawal was duly incorporated in the ledgers in the account of Smt. Savitri Juneja and of Avinash Kumar although admittedly he was not working on the seat meant for making entries in the ledgers of saving bank account. Thus if he was not working on the seat meant for making entries in the ledger of saving bank account there was no reason for him to over act in this regard and make necessary entries in the ledgers of saving bank account. This clearly shows that the petitioner was indulging in daily methods.

9. Counsel for the petitioner has pointed out that Savitri Devi and Avinash Kumar the account holders were never produced during the course of enquiry and has caused great prejudice to the petitioner. This plea is again merit less. Firstly for the reason that the petitioner himself has admitted his guilt. In that situation it was not necessary for the management to examine the said account holders. Secondly as reflected in the confession of the petitioner dated 20-8-1979 the petitioner is stated to have paid the amount to the parties for which he had also enclosed the receipts duly signed by Savitri Juneja and Avinash Kumar. In that situation when the account holders already received their payment from the petitioner, they would hardly be interested to appear in the enquiry. The said receipts by the account holders not only corroborates the admission of the petitioner but also explain for the reasons for not becoming the witnesses during the course of enquiry. The counsel for the petitioner has assailed the authenticity of the receipts stating that the receipts given by Avinash Kumar account holder is of dated 22-9-1989 which can not be an annexure to the confession of the petitioner dated 20-8-1979. There is no merit in this plea also. The receipt of Smt. Savitri Juneja and of Avinash Kumar is on a single page. In the upper part of the page the receipt is of Smt. Savitri Juneja account holder No. 2309. The same is dated 20-8-1979 i.e. the date of admission of the petitioner. In the lower part is the receipt of Avinash Kumar. However same is dated 22-8-1979. It seems the date has been written wrongly because both the receipt with naked eye is in the same pen and in the same flow. Even for arguments sake the receipt given by Avinash Kumar is taken out of ambit of consideration the receipt dated 20-8-1979 of Savitri Devi Juneja still corroborates the admission of the petitioner and obviously for not having produced herself as a witness during the course of enquiry for the reason stating in the receipt that the amount which has been withdrawn from her account on 12-7-1979, she has received the same and thus there is no dispute with

the bank. It is necessary to mention that the production of said receipts through the witness at the tag end of the enquiry has caused the waitout of the petitioner which is certainly unwarranted and unjustified on account of the fact that the petitioner himself made reference of said receipts in his admission and as well as in his written statement during the course of enquiry; thus causes no prejudice to him.

10. Counsel for the petitioner has also pointed out that the enquiry officer was acting as an agent of the bank and was biased against the petitioner as the transfer case of the enquiry officer from Srinagar to Punjab was pending before the management. There is no merit in this plea. No doubt Narinder Singh MWI enquiry officer has admitted in cross-examination that he was posted at Srinagar when he was appointed as enquiry officer. He also admits that while posted at Srinagar he had made request to the management for posting him to Punjab. He also admits that he was transferred in the year 1981 to Punjab. It is beyond understandable that he would submit enquiry report against the petitioner only to seek favour of the management in relation to his transfer. Thus the plea of the counsel for the petitioner is too far fetched to be accepted. Not only this he submit his enquiry report on 3-4-1981 when he was already posted at Srinagar. The mere fact that the enquiry officer is an employee of the management can not lead to the assumption that he was bound to decide the case in favour of the management. Likewise the fact that the enquiry officer was subordinate to the disciplinary authority would be no ground that he acted and malafide and had biased against the delinquent employee. Thus in absence of any special bias attributable to a particular officer it can never be held that the enquiry is bad just because it is conducted by an officer of the employee.

11. Counsel appearing on behalf of the petitioner also pointed out that enquiry has not been conducted in accordance with law. This plea again can not be accepted. The procedure before a domestic enquiry is altogether different from the procedure before a criminal court and domestic enquiry is not bound by the strict rules of procedure and evidence which are binding on a criminal court with respect to admission and appreciation of evidence. The domestic enquiry need not to be conducted in accordance with the technical requirements of criminal trial. However, they must be fairly conducted consideration of fair play and natural justice and the same has been done in this case. Merely breach of bare technicalities can not equated with violation of the principle of natural justice. The report of the enquiry officer is detailed one after appreciation of all the evidence. The disciplinary authority as well as appellate authority had also applied their mind before passing their orders. The petitioner was admittedly given personal hearing before the disciplinary authority and as well as by the appellate authority. Therefore, it can be held that the enquiry has been conducted in all fairness and the workman has been given adequate opportunity to defend his case.

12. In view of the discussions made in the earlier paras, the action of the management in dismissing Shri P. D. Pathak from service is fully justified and the workman is not entitled to any relief what-so-ever.

Chandigarh.

25-1-1994.

ARVIND KUMAR, Presiding Officer.

नई दिल्ली, 11 फरवरी, 1994

का. सा. 666.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसर्गण में केन्द्रीय सरकार भारतीय रिजर्व बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण व श्रम न्यायालय, बंगलूर के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 11 फरवरी, 94 को प्राप्त हुआ था।

[सं. एन-12011/10/89-आई.आर. (बी.-I)]

एस. एस. के. राव, डैस्क अधिकारी

New Delhi, the 11th February, 1994

S.O. 666.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Reserve Bank of India and their workmen which was received by the Central Government on 11-2-1994.

[No. L-12011/10/89-I.R. B.I.]  
S. S. K. RAO, Desk Officer

#### ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated this 25th day of January, 1994

Present :

Sri M. B. Vishwanath, B.Sc., B.L., Presiding Officer,  
Central Reference No. 9/90

I party

Ramasanjeevaiah  
s/o Kariyappa,  
Kotagal Village,  
Ramanagaram Taluk,  
Bangalore Dist. 560 002  
(By Sri V. Gopala Gouda,  
Advocate)

v/s.

II party

The Manager,  
Reserve Bank of India,  
Nrupathunga Road,  
Bangalore-560 002  
(By Sri P. S. Sowkar, Advocate)

#### AWARD

In this reference made by the Hon'ble Central Govt. by its order No. L-12011/10/89-IR Bank-I dt. 8-2-90 under Sec. 10(2A)(1)(d) of I.D. Act the point for adjudication as per schedule to reference is :

"Is the management of Reserve Bank of India, justified in terminating the services of Sh. Ramasanjeevaiah, w.e.f. 4-2-88 ? If not, to what relief the workman is entitled and from what date ?"

2. In the claim statement it is contended :—

In the interview held on 11-5-80, the I party was informed by the letter dt. 27-5-85 that he had been selected for being included in the waiting list of mazdoors. He was informed that he would be required to work as a ticca mazdoor until his appointment was regularised as a mazdoor. By letter Dt. 3-7-84 the II party again informed the I party that it was prepared to engage I party as a daily wage (ticca mazdoor). Thereafter he was engaged as a ticca mazdoor. By another letter dt. 8-10-85 the I party was once again called for an interview on 8-11-85. Thereafter, as per the letter dt. 19-3-86 the I party workman was informed that he was selected again as mazdoor and he was asked to work as a ticca mazdoor.

3. The I party workman is a physically handicap person. The I party submitted a representation dt. 16-7-87 requesting the II party to regularise him. He further requested the II party to consider him for the post of a peon. But instead of absorbing him in the bank service, I party was orally refused employment w.e.f. 4-2-88 without assigning any reason. The I party was working honestly and diligently. He had worked continuously for more than 240 days. The I party workman had put in 5 years of continuous service under the II party. The action of the II party in refusing to employ the I party w.e.f. 4-2-88 amounts to misconduct. So the conditions of retrenchment have not been complied with.

4. Subsequent to the refusal of employment, the I party met the Personnel Officer several times and requested him to reinstate and provide him work and regularise him. The II party went on promising to reinstate, but did not keep the promise. The II party has not replied to the legal notice issued by the I party. The I party is entitled to reinstatement with backwages.

5. In the counter statement it is contended :—

There is no relationship of employer and employee between the parties. The I party was engaged in a casual vacancy of a mazdoor on daily wage basis. The engagement was on a day-to-day basis and there was no obligation on the II party to provide continuous work, as the availability of work is dependent upon the absenteeism of mazdoors. The I party is not a workman and the provisions of the Industrial Disputes Act are inapplicable and hence, the reference is liable to be rejected. The I party was working only as a casual labourer on a day-to-day basis depending upon the requirement to enable the bank to carry on its functions. The I party was a ticca mazdoor. Depending on the seniority and availability of regular vacancy of a mazdoor the candidates in the waiting list will be considered for appointment in the regular vacancy. Till such time the casual vacancy is purely adhoc and such a casual labourer does not have any right for a regular job. The I party was ticca mazdoor, doing work in casual vacancies. While he was so working, he was caught while committing theft of removing one piece of 100 Rupee note out of the note packets which was being carried by him for stitching in the note examination section on 3-2-88. On account of this incident and taking into consideration the conduct and performance of the I party during the entire period during which he was engaged as ticca mazdoor, the II party decided to delete his name from the waiting list of mazdoors. Thus from 4-2-88 the I party was not being engaged as a ticca mazdoor. The theft committed by the I party has shaken the confidence of II party in him. The I party is not entitled for any relief. The II party's action falls within the explanation to the definition of retrenchment and does not amount to retrenchment, in view of Sec. 2(oo)(bb) of the I. D. Act. The action of the II party is perfectly legal. The conduct of the I party was unsatisfactory. The action of the II party not to engage I party after 4-2-88 is in accordance with the terms of engagement. The action of II party does not amount to retrenchment. It is not true the I party met the Personnel Officer and requested him to reinstate. The reference has to be rejected.

6. On the strength of above pleadings the following issues have been framed on 14-9-90 :—

1. Whether the II party proves that it is justified in terminating the services of II party w.e.f. 4-2-88 ? If not what relief ?
2. Whether the II party proves that the reference is liable to be rejected as contended in para 2 of the counter statement ?
3. Whether the II party proves that it has lost confidence in the I party as contended in para 7 and therefore he is not entitled to any relief ?
4. What award ?

7. On behalf of the II party M.Ws.1 to 4 have been examined. On behalf of the I party he has got himself examined and closed his case.

8. In para 2 of the counter statement it is contended that there is no relationship of employer and employee between the II party and I party, the I party was engaged in a casual vacancy as a mazdoor on daily wage basis, on day-to-day basis. There was no obligation on the II party to provide continuous work. It is further contended in para 2 that the I party was not a workman under the provisions of the I.D. Act though it is not specifically stated in para 2 of the counter



statement that the I party was not a workman within the meaning of Sec. 2(s) of the I.D. Act. In respect of the stand that there is no relationship of employer and employee between II party and I party and that the I party is not a workman arguments were not addressed on this point.

9. Ex. W.1 is the zerox copy of the memorandum sent to I party. In this it is stated that I party's name was sponsored by the employment exchange in connection with the waiting list for the post of ticca mazdoor and the I party has been advised to submit an application together with copies. Ex. W.2 issued by II party shows that I party's name was included in the waiting list of mazdoors. Ex. W.3 shows that the I party was directed by the II party to produce original certificates. Ex. W.4, which is styled memorandum, is in fact the appointment order issued to I party. Ex. W.4 is dt. 3-7-84. Ex. W.4 clearly says that the I party was appointed as a ticca mazdoor subject to his being medically fit, during the period of currency of the waiting list of mazdoors/ticca mazdoors. It has been made clear in Ex. W.4 that I party would be paid wages at the rate of Rs. 14/- per day on week days and Rs. 8/- on Saturdays. Though there are other conditions mentioned in Ex. W.4, there can be no doubt from Ex. W.4 that I party was appointed as a temporary ticca mazdoor to work on day-to-day basis. I hold therefore that there was relationship of employer and employee between the II party and I party and that I party was workman as defined under Sec. 2(s) of the I.D. Act. Issue No. 2 is accordingly answered against the II party.

10. The case of the II party is that it terminated the services of I party who was a temporary ticca mazdoor because he had committed theft of one piece of hundred rupee note out of note packet which was being carried by him for stitching in the note examination section on 3-2-88. II party has stated in the counter statement that his name was deleted from the list of mazdoors.

11. M.W.1 Subramanayam is the treasurer of II party. He has stated that from May 1990 he has been working as treasurer. He has stated that prior to this he has worked as coin note examiner Grade-II and I, as teller, as Asst. treasurer, as Deputy treasurer. He has stated in detail the procedure followed in the process of examination of notes. He has stated that the duty of mazdoor in the process is to take the notes to stitching machine, get it stitched, seal the packets, take it to the punching machine and bring back to the group supervisor. He has stated that the permanent mazdoors attend to this and if the absentees are more, they engage temporary ticca mazdoors or badali mazdoors. In cross-examination it is elicited that mazdoor takes the notes for stitching along with the concerned coin note examiner and that mazdoors do not do anything independently. In fact it is not the case of II party that the mazdoors do anything independently. There is nothing to disbelieve the evidence of M.W.1.

12. M.W.4 Dattatreya is the Asst. Treasurer. He has stated in his evidence that they maintain a form for allotment of work to ticca mazdoors. Ex. M.7 is that form maintained on 3-2-88. M.W.4 has stated that on 3-2-88 (date of alleged incident) I party was allotted work in examination hall No. A and he was issued badge No. 10. It is at Sl. No. 26 of Ex. M.7. He has made it clear in his evidence that he instructed and allotted the work on 3-2-88. Ex. M.7 bears the initials of M.W.4. There is nothing to disbelieve the evidence of M.W.4.

13. M.W.2 is Uma Jagadeesh who has been working as coin note examiner since Feb., 1988. She has stated that she worked as coin note examiner on 3-2-88. Ex. M.4 is the seal register. Ex. M.3(a) is the relevant entry. She has stated that on 3-2-88 she worked in 'A' section on table No. 3. Indira Ravindran (M.W. 3), M.W.2 has stated, was her group supervisor. Ex. M.2 is the punching register. Ex. M.2 at page 10 shows that M.W.2 worked on table No. 3 and punched 8 packets of two rupee notes and 7 packets of hundred rupee notes.

14. M.W.2 has stated in her evidence that on 3-2-88 she was given few packets of hundred rupees for examination and sorting purpose. While sorting the hundred rupee notes she felt that there was some difference with respect to quantity of packets. She has stated that her group supervisor checked four packets. The group supervisor found they were all correct and there was no excess or short. She has stated that the mazdoors in the section do the stitching. She has stated that she took all the packets and got them stitched,

sealed and punched on the non-issuable notes. She has stated that she accompanied the mazdoor when the packets were stitched.

15. M.W.2 has stated in her evidence that then she handed over all packets to the group supervisor M.W.3 and group supervisor acknowledged for having received them from her (M.W. 2) and gave the packets for recounting by others and like that she (M.W. 3) issued some packets to her also for recounting. M.W. 2 has stated in her evidence that while she was recounting M.W. 3 Indira Ravindran came and gave her one of M.W. 2's reissuable packets and told her (M.W. 2) that it had only 99 notes and handed over to her that one hundred rupee note packet in which one piece of hundred rupee note was missing and asked her to put that note in the packet, get it stitched and sealed.

16. M.W. 2 has stated in her evidence that M.W. 3 told her that some mischief had been done to her packet and one of mazdoors had taken away hundred note. M.W. 2 has stated that she gave report as per Ex. M.4 to the section head. She has stated that I party was the mazdoor on that day in her table.

17. The contents of Ex. M.4 given by M.W. 2 corroborate the evidence of M.W. 2 given before this Tribunal. In cross-examination M.W. 2 has stated that because of the incident she remembers the name of I party.

18. In cross-examination it is elicited from M.W. 2 that there is no entry in Ex. M.2 or M.3 to show that on that day M.W. 2 received 17 packets of hundred rupee notes for sorting. Ex. M.1 pertains to the acknowledgment given by the group supervisor to the treasurer. It is not meant to show packets of reissuable notes given for recounting. Ex. M.2 is the register showing notes defaced by punching. It relates to non-reissuable notes. It does not relate to reissuable packets given for recounting.

19. M.W.2 has stated in her cross-examination that when group supervisor M.W.3 gave her one hundred rupee note and packet containing 99 pieces of hundred rupee notes, she asked M.W.3 where from she got that one hundred rupee note. M.W.3 told her that some mischief had been done by the table mazdoor. M.W.3 told M.W.2 that it was I party who had done the mischief. Again, the evidence of M.W.2 before this Tribunal is corroborated by the contents of her report Ex. M.4.

20. M.W.2 has stated that at the time of stitching she will be standing in front of the machine. In cross-examination M.W.2 has stated that I party did not do any mischief visible to her. On the strength of this piece of evidence it is argued that the incident alleged against I party is false. It is not the case of the II party that the I party removed one hundred rupee note in the presence of M.W.2. The case of the II party is that the I party had mischievously removed without the notice of anybody, one hundred rupee note from the reissuable packets. It is suggested to M.W.2 that Ex. M.4 is got up subsequently for the purpose of this case. It is difficult to swallow that Ex. M.4 has been got up.

21. M.W.3 Indira Ravindran who has been working in cash department as clerk-cum-coin note examiner Grade-I. She has stated that she was group supervisor also. She has stated in her evidence the duties of a group supervisor. She has stated in her evidence that she was working on 3-2-83 in examination hall 'A' Table III. She has stated that Ex. M.3 is the seal book. The seal BGA-56 was issued to M.W.2. M.W.2 was issued hundred rupee notes and other notes of other denomination. She has stated that M.W.2 gave her notes containing 4 packets of hundred rupee notes prepared by her. M.W.3 has stated that M.W.2 gave 4 packets for checking them. M.W.3 has stated that she checked the 4 packets and they were all right. M.W.3, as a token of confirming it, initialled on the first note and last note on each of the 4 packets and handed them over back to W.W.2.

22. M.W.3 has stated in her evidence that M.W.2, after completing her work went for stitching, sealing and punching along with the table mazdoor Rama Sanjeevaiah (I party). Then M.W.2 handed over all the packets to M.W.3. M.W.3 gave the packets of another note examiner for recounting. The recounter was Padmavathy. M.W.3 has stated in her evidence that Padmavathy recounted and found that in one



cket of hundred rupee notes there was only 99 pieces and Padmavathy brought it to her notice. M.W.3 found that the cket was the one examined by M.W.2.

23. M.W.3 has stated in her evidence that to her surprise she found her initials only on the last piece of that packet and not on the first piece. So she got doubt that some mischief must have happened. She casually enquired I party whether he had any hundred rupee note on his person. M.W.3 is stated that I party, at first, denied. Again M.W.3 asked party workman to show her the note if he has. M.W.3 has stated that then the I party workman removed from his pocket one hundred rupee note and some other notes. M.W.3 asked the I party workman to show hundred note. Then I party showed M.W.3 hundred rupee note. M.W.3 has stated in her evidence that she found her initials on that 100 rupee note shown to her by the I party. The I party gave this hundred rupee note back to M.W.3. M.W.3 showed M.W.2 the note given to her (M.W.3) by the I party. Then the packet was opened and this hundred rupee note was stitched to the concerned packet.

24. M.W.3 has stated in her evidence that she gave the report Ex. M.5 to the Asst. Treasurer. Ex. M.5(a) is the signature of M.W.3. Ex. M.5(b) is the signature of then then Asst. Treasurer. The contents of Ex. M.5 corroborate the oral evidence of M.W.3 before this Tribunal.

25. In cross-examination M.W.3 has stated that she has not produced any document to show who were the mazdoors attached to her table on that day. Allotment of mazdoors has been spoken to by M.W.4. It is not the function of M.W.3 to prove who were the mazdoors attached to her table on that day. M.W.3 has stated that there is no written order allotting mazdoors to her table. There won't be separate considered orders for official routine work. M.W.3 has stated in cross examination that there is no document to show which packet was given to whom for recounting. She has stated that except her statement in Ex. M.5 there is no other record to show that she gave the packets for recounting to Padmavathy. On this strength it is argued that the incident is false. The process of note examination and stitching will be going on within a strong room and for every trivial procedure one can't expect the documents since there will be head of section who assigns work orally.

26. M.W.3 has stated that mahazar was not drawn up in regard to the incident. The Learned counsel for the I party brought this to my notice pointedly. This is not a criminal case and the investigation is not done by any police agency. We take into consideration the preponderance of evidence.

27. It is seriously contended before me by the Learned counsel for the I party that the II party official Padmavathy who recounted the packet and found one note missing has not been examined before this Tribunal and the best evidence is not placed before this Tribunal. I completely agree with the Learned counsel for the I party that this is a lacuna in the II party's case. But it should be remembered that before a Tribunal the II party is not expected to prove the incident against the I party beyond reasonable doubt. It is argued by the Learned counsel for the I party that A. Sundar Rajan who has put his signature at Ex. M.5(b) has not been examined. There is no substance in this argument. M.W.3 has spoken to the signature of Sundar Rajan.

28. It is argued by the Learned counsel for the I party that the incident is entirely false and the II party wants to prevent I party's reinstatement. The I party himself has admitted in his evidence that on 3-2-88 he worked in the cash department and that Indira Ravindran M.W.3 was his group supervisor and that he was allotted to examination hall 'A'. He has further admitted that Uma Jagadeesh M.W.2 was the coin note examiner allotted to the table where he was working. He has stated that work of ticca mazdoors includes carrying the notes in the tray for stitching affixing labels and carrying it back to group supervisor. He has stated that on 3-2-88 the packets prepared by Uma Jagadeesh M.W.2 were given for counting to Padmavathy.

29. I party was a petty temporary ticca mazdoor working on day-to-day basis. It is on record that he is a physically handicapped. I simply cannot understand why top officers

of the II party, which include two women M.Ws.2 and 3 should conspire against this illiterate I party workman.

30. For the aforesaid reasons, I am of opinion, the incident alleged against the I party workman is established.

31. It is argued by the Learned counsel for the I party that the conduct of I party amounts to misconduct and so the order of termination amounts to retrenchment. No enquiry has been held against I party. Since the II party has not complied with the conditions of retrenchment the I party has to be reinstated. Ex. W.4 is the order issued by the II party appointing I party as a daily wage (ticca mazdoor) in a casual vacancy on day-to-day basis. Condition 2 of Ex. W.4 says that I party's engagement as daily wage mazdoor will not confer on him any right for a part time, temporary or permanent post.

32. Interpreting Sec. 2(oo)(bb) of the I.D. Act our Hon'ble High Court has been pleased to lay down in the decision reported in 1986(1) L.L.J. 195 (Shankariah v/s. K.S.R.T.C.) that :

"In view of Sub-Clause (bb) which was introduced into the Act by Act 49/84 which came into force from 19th August, 1984, the termination of services of a workman in terms of the stipulation contained in the order of appointment does not amount to retrenchment."

In view of the law laid down by our Hon'ble High Court, bearing in mind clause 2 Ex. W.4 I reject the argument advanced by the Learned counsel for I party. It is clear from the material on record that the I party has worked continuously for more than 240 days in a year. On the strength of this also it is contended that the conditions of Sec. 25-F have not been complied with and that I party is entitled to reinstatement. This argument also has no force in view of the law laid down by our Hon'ble High Court. The II party has acted as per terms and conditions mentioned in Ex. W.4.

33. For the aforesaid reasons I am of opinion that the II party has proved that it was justified in terminating the services of I party w.e.f. 4-2-88. This is my finding on first part of issue No. 1.

34. Now I will see whether the I party is entitled to any relief or not in view of the power conferred on the Tribunal under Sec. 11-A of the I.D. Act. The I party is a physically handicapped person. It has been laid down by the Supreme Court in AIR 1989 SC page 149 (Scooter India Ltd., Lucknow v/s. Labour Court, Lucknow) that though disciplinary enquiry is found to be fair and lawful and its findings were not vitiated in any manner, that by itself would not be a ground for non-interference of the order of termination of service. The Supreme Court has been pleased to lay down in this authority that the erring workman should be given an opportunity to reform himself and prove to be loyal and disciplined employee.

35. It has been laid down by our Hon'ble High Court in 1988 (1) L.L.J. 22 (Karnataka Dairy Development Corporation Ltd. v/s. Presiding Officer and another) that "it is now well settled that the Industrial Disputes Act is a legislation that favours the workman and meant for his beneficial welfare. In construing its provisions the Courts lean in favour of workman." The I party workman has been terminated w.e.f. 4-2-88. Now we are in the year of grace 1994 January. If backwages are denied to I party that itself will be an adequate punishment. For these reasons I am of opinion that reinstatement without backwages will meet the ends of justice.

36. It has been laid down by the Bombay High Court in 1984 (1) L.L.J. 203 (Vinayak Bhagwan v/s. Kismet Ltd.) that if the employee's termination was not a result of any loss of confidence, reinstatement cannot be refused on the ground that the employer had no confidence in the workman. I hold issue No. 3 against the II party.

37. The authorities submitted by the Learned counsel for the I party are not applicable since they have been rendered before the amendment as per Sec. 2(oo)(bb) of I.D. Act was introduced.

38. All other documents and evidence not referred to by me above are not relevant. In any case they do not alter my conclusions reached above.

#### ORDER

It is hereby declared that the action of II party in terminating the services of I party w.e.f. 4-2-88 was justified. In view of the reasons given above, the II party is directed to reinstate the I party workman forthwith with continuity of service. No backwages. Award passed as stated herein accepting the reference in part. Submit to Government.

(Dictated to Stenographer, typed by him, corrected, signed by me on this 25th day of January 1994).

M. B. VISHWANATH, Presiding Officer

नई दिल्ली, 16 फरवरी, 1994

का. आ. 667.—केन्द्रीय सरकार का समाधान हो गया है कि लोकहित में ऐसा अपेक्षित है कि सीमेंट उद्योग में सेवाओं को जिसे औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की प्रथम अनुसूची की प्रविष्टि 3 के अंतर्गत निविष्ट किया गया है, उक्त अधिनियम, के प्रयोजन के लिए उपयोगी सेवायें घोषित किया जाना चाहिए।

अतः अब औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खंड (३) के उपखंड (6) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए तत्काल प्रभाव से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[सं. एस-11017/13/85-डी-1 (ए)]

एस.एस. पराशर, अवर सचिव

New Delhi, the 16th February, 1994

S.O. 667.—Whereas the Central Government is satisfied that the public interest requires that the services in the Cement Industry which are covered by entry 3 in the First Schedule to the Industrial Disputes Act, 1947 (14 of 1947), should be declared to be a public utility service for the purpose of the said Act;

Now, therefore in exercise of the powers conferred by sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby declares with immediate effect the said industry to be a public utility service for the purposes of the said Act for a period of six months.

[No. S-11017/13/85-D.I(A)]

S. S. PRASHER, Under Secy.